129-73

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 650. ~~345~~ 80

JOHNSON N. CAMDEN, APPELLANT,

vs.

F. L. B. MAYHEW AND COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED OCTOBER 7, 1885.

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1 At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburgh, in said district, on the 17th day of November, 1883, the following order or decree was made and entered of record, to wit:

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL AND OIL LAND COMPANY, B. S. Compton, R. A. Storrs, W. D. Thompson, Heman Loomis, J. H. Carrington, W. H. Beach, A. C. Worth, Benjamin B. Valentine.
In Equity.

This day the Toledo National Bank, R. S. Blair, and Benjamin B. Valentine presented their petitions to the court, accompanied by transcripts of judgments rendered in favor of the petitioners, respectively, against the West Virginia Oil and Oil Land Company, in manner and amounts as follows—that is to say: Two judgments to R. S. Blair for the sum of five hundred dollars each, with interest from the 15th day of June, 1881, and $40.50 costs; to the Toledo National Bank the sum of nine thousand seven hundred and seventy-three $\frac{40}{100}$ dollars, with interest from the 17th day of November, 1883, and $70.30 costs; and to Benjamin B. Valentine the sum of
eight thousand nine hundred & thirty-one dollars, with in-
2 terest thereon from the 2d day of October, 1883, and $58.95
costs, which petitions, being inspected by the court, are ordered to be filed, and said petitioners are admitted as parties to this suit for the purpose of protecting their interests therein. The exceptions filed by any and all of the parties to the reports of the master in this suit are respectively waived, and this cause coming on this 17th day of November, 1883, to be heard upon the matters presented by the record, was argued by counsel and considered by the court; and it is adjudged, ordered, and decreed that the following-named persons, respectively, have proved and established claims against the West Virginia Oil and Oil Land Company, and that the debts so established are liens upon the lands hereinafter more particularly described of the West Virginia Oil and Oil Land Company, and that such debts are liens on said land stated in order of priority and amounts, respectively, as follows:

First. William D. Thompson, the sum of sixty-one thousand two hundred & sixty-seven $\frac{79}{100}$ dollars, with interest from the 17th day of November, 1883; and Richard A. Storrs, the sum of forty-seven thousand six hundred and sixty-three $\frac{29}{100}$ dollars, with interest from the 17th day of November, 1883; and Heman Loomis, the sum of thirty-nine thousand four hundred and seventy-six $\frac{61}{100}$ dollars, with
interest thereon from the 17th day of November, 1883, the
3 said debts of Thompson, Storrs, and Loomis being equal in
priority and entitled to rateable payment and satisfaction.

Second. James H. Carrington, the sum of forty-six thousand nine hundred & thirty-four $\frac{58}{100}$ dollars, with interest from the 17th day of November, 1883.

Third. A. C. Worth, the sum of two thousand six hundred and fifty $\frac{8}{100}$ dollars, with interest thereon from the 17th day of November, 1883.

Fourth. W. H. Beach, the sum of two thousand eight hundred and eighty-eight $\frac{58}{100}$ dollars, with interest from the 17th day of November, 1883.

Fifth. The Toledo National Bank, the sum of nine thousand eight hundred & forty-three $\frac{70}{100}$ dollars, with interest from the 17th day of November, 1883, and R. S. Blair the sum of five hundred and ninety-three $\frac{16}{100}$ dollars, with interest from the 17th day of November, 1883, the debts of said bank and of said Blair above mentioned being of equal priority and entitled to rateable payment and satisfaction.

Sixth. R. S. Blair, the further sum of five hundred and ninety-two $\frac{66}{100}$ dollars, with interest thereon from the 17th day of November, 1883.

Seventh. Benjamin B. Valentine, the sum of nine thousand and fifty-six $\frac{93}{100}$ dollars, with interest from November 17th, 1883.

4 Eighth. Heman Loomis, the further sum of forty-nine thousand one hundred and eleven $\frac{10}{100}$ dollars, with interest thereon from the 17th day of November, 1883, in addition to the sum hereinbefore decreed in favor of said Loomis.

And it is further adjudged, ordered, and decreed that said Thompson, Storrs, and Heman Loomis as holders of the bonds secured by the deed of trust dated October first, 1873, in the record of this cause described, are entitled to have the real estate and property therein mentioned sold for the sums of money so found due them, respectively, and that the other creditors above named, parties hereto, are entitled to have the amounts of money respectively decreed to them paid out of the real estate and property of the said The West Virginia Oil and Oil Land Company, and to have the said real estate sold in satisfaction of said liens.

And it is further adjudged, ordered, & decreed that Charles H. Shattuck, special receiver in this cause, do proceed to collect and reduce into money the oils, accounts, bills receivable, and other property in his hands or owing to him as such receiver, and that he shall at once apply the funds in his hands and which may hereafter come into his hands as such receiver as follows: First, to the payment of all the costs of this suit, and then to R. A. Storrs the
amount decreed in his favor in full, the said Thompson
5 and Loomis assenting thereto, and he shall then apply the
residue to the payment of the amount due the said Thompson, the said Loomis assenting thereto, and all other sums coming into his hands from money or property due to him he shall apply in like manner upon the debts herein decreed in the order of their priority, and he shall report the amount so distributed by him and the balance due upon each of said debts on which he may have made payments to this court on the first day of the month next ensuing after the date of this decree.

And it is further adjudged, ordered, & decreed that the said defendant, The West Virginia Oil and Oil Land Company, do pay unto the creditors hereinbefore named the several amounts respectively

found in their favor, after crediting the funds paid by the receiver, as provided above, and the court being of the opinion that the several holders of the liens herein adjudicated are entitled to have their debts paid out of the land aforesaid and the rents, issues, and profits thereof in the respective order of their priority as above set forth, it is further adjudged, ordered, and decreed that unless the said The West Virginia Oil and Oil Land Company, or some one for it, do, within thirty (30) days from the date of this decree, pay unto the several persons, respectively, the sums and
6 amounts severally due to them and decreed to be paid to them as aforesaid, then W. L. Cole and J. B. Jackson, who are hereby appointed commissioners for that purpose, shall, after first giving notice of the time and place of sale by advertisement printed for six successive weeks in some one of the newspapers published, each, respectively, in Ritchie county, West Virginia, and in Monroe, Michigan, and in Parkersburgh, West Virginia, and by a like notice, posted for a like period at the front door of the court-house of Ritchie county, sell at public auction, at the Juliann-street entrance of the United States court-house and post office in Parkersburgh, West Virginia, all the following property and real estate—that is to say: All that certain tract or parcel of land situated, lying, and being in Ritchie county, in the State of West Virginia, on the waters of the Laurel Fork of Goose creek, Alum Cave Run, Short Run, and the waters of Oil Spring Run, containing thirteen hundred and ninety-seven acres of land; said tract is the eastern part of what is called Simons' Survey No. 27, and is the same tract which was conveyed to the West Virginia Oil and Oil Land Company by Walter Keeler and wife by deed dated July 2nd, 1866, and recorded in the office of the clerk of the county court of
7 Ritchie county, West Virginia, in deed-book No. 10, on pages 492, 493, 494, and 495; also all that certain other tract or parcel of land situate, lying, and being in the county of Ritchie aforesaid, containing one hundred and twenty-four and one-quarter acres, which said tract is bounded and described as follows, to wit: Beginning at a white oak in a line of Worth's general survey, and being a corner to lands claimed by Walter Keeler, and running thence north 73° east 33 poles, crossing Oil Spring Run, to a white oak and beech; thence S. 10° west 148 poles to a beech on the east bank of Oil Spring Run to land now or late of George Rutherford; thence along said Rutherford's line north 86° west 26 poles, crossing said run, to a white oak; thence south 12° west 82 poles to an elm tree, corner to said Rutherford, standing on the north side of Goose creek at the mouth of a small drain; thence down said creek south 61° west 18 poles to a stake; thence south 10° west 8 poles to a stake; thence north 53° west 153 poles to a stake on Keeler's line; thence north $46\frac{1}{2}$° east 217 poles to the place of beginning; and also all and singular the tubing lines belonging to the West Virginia Oil and Oil Land Company on the premises hereinbefore described; together with all and singular the property, improvements, machinery, appliances, all the appurtenances belonging thereto and owned
8 by the West Virginia Oil and Oil Land Company on the

property above mentioned and described, all the property aforesaid being the same mentioned and described in the papers and proceedings in this cause.

The said sale shall be made upon the terms of cash in hand on the day of sale; but before said commissioners, or either of them, shall proceed to make any sale under this decree they shall enter into a bond, with security to be approved by one of the judges, or by the clerk of this court, in the penalty of two hundred thousand dollars, conditioned for the faithful performance of their duties as such commissioners under this decree, and for their paying over and accounting for all moneys and other property that may come to their hands by virtue hereof.

And it is further adjudged, ordered, and decreed that until the further order of this court the said special receiver shall continue to have charge and possession of the property of said defendant company and of the rents, issues, and profits thereof, subject to all orders and decrees made with reference to such receivership.

9 On another day, to wit, March 1st, 1884, the following order was made and entered of record, viz:

F. L. B. MAYHEW & Co.
vs. } In Equity.
THE WEST VIRGINIA OIL & OIL LAND COMPANY.

This day came A. I. Boreman, Esquire, and presented the petition of Lavinia H. Austin in this cause, and moved the court for leave to file the same, which leave is granted and the same is accordingly filed.

The petition referred to is in words and figures following, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY.

To the honorable the judges of the said circuit court of the United States for the district of West Virginia:

Your petitioner, Lavinia H. Austin, respectfully represents that she is a citizen of the State of New York and a resident of
10 the city of Buffalo, in said State; that on the 14th day of December, 1883, your petitioner instituted an action of debt in the circuit court of Ritchie county, State of West Virginia, in her own name & favor against one Martin V. Bentley and The West Virginia Oil & Oil Land Company for the sum of $5,096.90 debt, with legal interest thereon from the 29th day of June, 1881, until paid, which action was founded on a judgment of the circuit court of the United States for the sixth circuit & eastern district of Michigan; that in said action of debt, and on the same day that the same was so instituted, your petitioner sued out and caused to issue from

the clerk's office of said circuit court of Ritchie county, State of West Virginia, an order of attachment pursuant to the *state* of said State against the estate of said defendant, The West Virginia Oil & Oil Land Company, and to subject the same to the payment of the aforesaid debt of your petitioner, which order of attachment was directed to and placed in the hands of the sheriff of said county of Ritchie to be levied & executed; that on the 18th day of December, 1883, D. F. Haymond, sheriff of said county of Ritchie, in whose hands the said order of attachment was so placed as aforesaid, levied the same on the following-described land and real estate of said defendant, The West Virginia Oil
11 & Oil Land Company—that is to say, all that certain tract or parcel of land situate, lying, and being in said county of Ritchie & State of West Virginia, on the waters of Laurel Fork of Goose creek, Alum Cave Run, Short Run, and the waters of Oil Spring Run, containing fourteen hundred and ninety-seven acres, more or less, which said tract is the eastern part of what is called Sims' Survey No. 27, it being the same tract of land conveyed by Walter Keeler to the West Virginia Oil and Oil Land Company by deed bearing date on the 2nd day of July, 1866, and recorded in deed-book No. 10, pages 492, 493, 494, and 495, county court clerk's office, Ritchie county, West Virginia, and is bounded and described as follows: On the west by a line of the Morgan Jones one-thousand-acre tract, &c., &c., excepting out of the tract above described one hundred acres at the northwest corner thereof, heretofore sold to one Humphrey Mountz; also all the right, title, and interest of the West Virginia Oil and Oil Land Company in and to a certain piece or parcel of land near Petroleum, in Ritchie county, State of West Virginia, adjoining the above-mentioned tract, and bounded as follows: Beginning at a white oak in line of Worth's general survey, and being a corner to lands claimed by Walter Keeler, successor to John Harris, thence north seventy-three degrees east thirty-three
12 poles, crossing Oil Spring Run, to a white oak and beech; thence south ten degrees west one hundred and forty-eight poles to a beech on the east bank of Oil Spring Run, corner to George Rutherford, successor to Richard Tasher; thence with two of Rutherford's lines north eighty-six degrees west twenty-six poles, crossing said run, to a white oak; south twelve degrees west eighty-two poles to an elm tree, corner to said Rutherford, standing on the north side of Goose creek at the mouth of a small drain; thence down said creek south sixty-one degrees west eighteen poles to a stake; thence south ten degrees west eight poles to a stake; thence north fifty-three degrees west one hundred and fifty-three poles to a stake on said Keeler's line or Worth's line; thence north forty-six and a half degrees east two hundred and seventeen poles to the beginning, containing one hundred and twenty-five acres, more or less, excepting, however, about three-fourths of an acre of said land conveyed to Burchard, as may be seen from the deed therefore on record in the clerk's office of the county court of said county of Ritchie, in deed-book No. 10, pages 359, 360, and 361, to which reference is here made.

Your petitioner further represents that at a term of the said circuit court of Ritchie county, State of West Virginia, being held on the 26th day of February, 1884, the said action of debt came on for trial before said last-mentioned court, and it then appearing
13 to said court from the return of the sheriff of said county of Ritchie on the summons to answer said action of debt that the said defendant, Martin V. Bentley, was not found in said county & that he was not served with said summons, & it also appearing that said Bentley was not a citizen or resident of said State of West Virginia, the said action was abated as to said Bentley; and thereupon the said last-mentioned court proceeded to, and did, on the day and year last aforesaid, try said action of debt and said attachment and rendered and gave judgment in said action and on said attachment as against said West Virginia Oil & Oil Land Company, which judgment in said action was in favor of your petitioner against the said defendant, The West Virginia Oil & Oil Land Company, for the sum of fifty-nine hundred and twelve dollars debt, with legal interest thereon from the 25th day of February, 1884, until paid, and the costs of your petitioner in that behalf expended, which costs amount to the sum of thirty-two dollars and ninety-five cents; and it was further thereby then and there adjudged and considered that said attachment was issued on good and sufficient grounds, and by the statute of said State of West Virginia the said attachment is a lien on the above-described land and real estate of said defendant, The West Virginia Oil & Oil Land Company,
14 from the aforesaid date of the issuing and suing out of the same—that is to say, from the — day of December, 1883; and it was further by the said judgment of the said circuit court of said county of Ritchie then and there considered and ordered that the said land and real estate so levied on as aforesaid be sold for cash in hand, at the front door of the court-house of said county of Ritchie, on a court day, after having first given sixty days' notice of time, terms, and place of such sale by publishing the same for that period in a weekly newspaper published in said county of Ritchie and by posting the same for the same period at some public place near said land and real estate and at the front door of the court-house of said county of Ritchie; and it was thereby then and there further ordered that the sheriff of said county of Ritchie do make said sale upon the terms, at the place, and after the notice in said judgment and order so as aforesaid set forth; and it was thereby then and there ordered that said sheriff should make return & report to said circuit court of Ritchie county of his proceedings under said order of sale, and that he return therewith the proceeds of such sale; and it was thereby then & there further considered and ordered that the proceeds of said sale be applied in satisfaction of the above judgment of your petitioner in said action, and that the sur-
15 plus, if any, be paid to said defendant, The West Virginia Oil & Oil Land Company, a copy of which judgment and decree of sale of said circuit court of Ritchie county, State of West Virginia, is herewith filed, marked Exhibit "M," & is made a part of this petition.

Your petitioner further represents that the land and real estate of the West Virginia Oil & Oil Land Company levied on by virtue of the aforesaid attachment & so ordered to be sold to satisfy your petitioner's judgment aforesaid is what is known as oil territory, and has beneath its surface large quantities of natural oil or petroleum, the greater part of which is of heavy gravity & is as valuable as any natural oil yet found in this country; that for years past the business of producing said oil from said territory by drilling wells & operating the same has been carried on by the lessees of said defendant, The West Virginia Oil & Oil Land Company, and great quantities thereof have been produced & sold in the market at good prices; that out of all said production the said defendant company reserved and has received a rent or ro-alty amounting to many thousands of dollars per year, and the said production, subject to & paying such rent and royalty, still continues, and said territory is still of great value; all of which fully appears from the pleadings & proofs, the reports of the master, commissioner, and receiver in the above-entitled cause of F. L. B. Mayhew & Co.
16 against The West Virginia Oil & Oil Land Company and others, to which reference is now here most respectfully made.

Your petitioner further represents that, as she is informed by her counsel, and the truth of which is known to the court, the above-entitled suit in equity of F. L. B. Mayhew & Co. against The West Virginia Oil & Oil Land Company has been pending in this honorable court for several years, the object and purpose of which has been and is to subject the above-mentioned valuable oil property of The West Virginia Oil & Oil Land Company to the payment of certain alleged debts of said company and alleged liens against said company, the justice of which your petitioner does not admit; that such proceeding have been had in said last-mentioned suit that on the 17th day of November, 1883, this honorable court pronounced and entered a decree therein (to which reference is here made) whereby it adjudged that certain debts therein mentioned were liens on said oil property, and decreed and ordered the same to be sold to satisfy, pay, and discharge said debts & liens, the terms of which sale are in said decree set forth; and by said decree W. L. Cole & J. B. Jackson were appointed special commissioners to make said sale and to execute said decree, and were thereby required to report their proceedings to this honorable court for its further action; and your petitioner represents that said commissioners, pursuant to said decree, have advertised and given notice that they will sell
17 the said property under and by virtue of said decree on the first day of March, 1884; and your petitioner is now advised and insists that the aforesaid judgment and order of sale by the circuit court of said county of Ritchie in her favor against said West Virginia Oil & Oil Land Company is a lien for the full amount of the debt, interests, and costs of said judgment from the date of the suing out and issuing her said attachment on the said land and real estate so decreed to be sold by said decree pronounced on the said 17th day of November, 1883, in the above-entitled suit of F. L. B.

Mayhew & Co. against The West Virginia Oil & Oil Land Company & others, and that if the said land & real estate shall be sold under said last-mentioned decree she is advised by counsel and insists that her aforesaid judgment and order of sale is a like lien on the proceeds of such sale.

Your petitioner therefore prays this honorable court that she be allowed to file this her petition in the above-entitled suit of F. L. B. Mayhew & Co. against The West Virginia Oil & Oil Land Company and others for the purpose of setting up and asserting her aforesaid lien against such land and real estate so ordered to be sold as aforesaid by said decreed in said last *last* mentioned suit; that her aforesaid judgment & attachment lien may be decreed to be a
18 valid lien against said land & real estate, and that the payment of the full amount of debt, interest & costs thereof may be enforced against said land & real estate and against the proceeds of the sale thereof, if a sale shall take place under the said decree last aforesaid or under or by virtue of any other order or decree in the said suit of F. L. B. Mayhew & Co. against The West Virginia Oil and Oil Land Company & and others; and the further prayer of your petitioners is that this honorable court will grant unto her such other, further, and general relief in the premises as to equity and this honorable court may seem meet, and as in duty bound your petitioner will ever pray, &c.

LAVINIA H. AUSTIN,
By Counsel.

A. I. BOREMAN,
Solicitor & Counsel for Petitioner.

UNITED STATES OF AMERICA, } *To wit:*
State & District of West Virginia, County of Wood, }

A. I. Boreman, being duly sworn, on oath says that he is solicitor, counsel, & attorney for the petitioner named in the foregoing petition; that he knows all the material facts & allegations therein; that said material facts & allegations are true, and the other facts and allegations he is informed & believes to be true.

A. I. BOREMAN.

Taken, subscribed, and sworn to before me this 1st day of March, 1884.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

19 Exhibit "M" is in words and figures following, to wit:

In the Circuit Court of Ritchie County, West Virginia, Feb. 26th, 1884.

LAVINIA H. AUSTIN
vs.
MARTIN V. BENTLEY and THE WEST VIRGINIA OIL & OIL LAND COMPANY.

In debt.

This day came the plaintiff, by her attorney, and it appearing to the court from the return of the sheriff of this county of Ritchie, on the summons issued in this action, that the said defendant, Martin V. Bentley, is not found in said county of Ritchie, and it also appearing that he is not a resident of said county or of this State, on motion of the plaintiff, it is ordered that this action abate as to said Bentley; and it also appearing that said defendant, The West Virginia Oil & Oil Land Company, is a foreign corporation and a non-resident of this State, and that said corporation has land and real estate situated in said county of Ritchie, and that an order of attachment issued on behalf of the plaintiff in this action at the commencement thereof, to wit, on the 14th day of December, 1883, & that the same has been levied on said land and real estate by the sheriff of the said county of Ritchie to subject the same to the 20 plaintiff's debt and claim herein, and it also appearing that an order of publication in said action and attachment has been legally entered and executed against said defendant corporation, and neither party requiring a jury herein, the court proceeded to ascertain the amount the plaintiff is entitled to recover in this action, and, having heard the evidence, the court doth ascertain and consider that the plaintiff recover against the said defendant, The West Virginia Oil & Oil Land Company, the sum of fifty-nine hundred and twelve dollars, debt, with legal interest thereon from this 25th day of February, 1884, until paid, and her costs about her suit in this behalf expended; and it appearing from the return of D. F. Haymond, sheriff of said county of Ritchie, endorsed on the order of attachment issued in this action, that on the 18th day of December, 1883, he levied said order of attachment on the following-described land and real estate of the said defendant, The West Virginia Oil & Oil Land Company—that is to say, all that certain tract or parcel of land situate, lying, and being in Ritchie county, in the State of West Virginia, on the waters of Laurel Fork of Goose creek, Alum Cave Run, Short Run, and the waters of Oil Spring Run, containing fourteen hundred and ninety-seven acres, more or less, which said tract is the eastern part of what is called Sims' Survey No. 27, it being the same tract of land conveyed by Walter Keeler to the West Virginia Oil & Oil Land Company by deed bearing date on 21 the 2nd day of July, 1866, and recorded in deed-book No. 10, pages 492, 493, 494, and 495, county court clerk's office, Ritchie county, West Virginia, and is bounded and described as follows: On the west by a line of the Morgan Jones one-thousand-acre tract, &c., &c., except out of the tract above described one hundred acres at the northwest corner thereof, heretofore sold to one Humphrey Mountz; also all the right, title, and interest of the West Virginia Oil & Oil Land Company in and to a certain piece or parcel of land near Petroleum, in Ritchie county, and bounded as follows: Beginning at a white oak in a line of Worth's general survey, and being a corner to lands claimed by Walter Keeler, successor to John Harris, thence north seventy-three degrees east thirty-three poles, crossing Oil Spring Run, to a white oak and beech; thence south ten degrees west one hundred and forty-eight poles to a beech, on the east bank of Oil Spring Run, corner to George Rutherford, successor of Richard Tasher; thence with two of Rutherford's lines north eighty-six degrees west twenty-six poles, crossing said run, to a white oak, south twelve degrees west eighty-two poles to an elm tree, corner to said Rutherford, standing on the north side of Goose creek at the mouth of a small drain; thence down said creek south sixty-one degrees west eighteen poles to a stake; thence south ten degrees west eight poles to a stake; 22 thence north fifty-three degress west one hundred and fifty-three poles to a stake on said Keeler line or Worth's line; thence north forty-six and a half degrees east two hundred and seventeen poles to the beginning, containing one hundred and twenty-five acres, more or less, excepting, however, about three-fourths of an acre of said land conveyed to Burchard. Reference is had to deed-book No. 10, pages 359, 360, and 361, county court clerk's office, Ritchie county, West Virginia, for other particulars with reference to said lands.

It is, therefore, considered and adjudged by the court the said attachment issued on good and sufficient grounds, and that the plaintiff has a lien from the aforesaid date of the issuing thereof for her interest and costs aforesaid on the land & real estate so levied on; and it is further considered and ordered that the said land and real estate so levied on as aforesaid be sold for cash in hand at the front door of the court-house of said county of Ritchie, on a court day, after having first given sixty days' notice of the time, terms, & place of such sale by publishing the same for that period in a weekly newspaper published in said county of Ritchie, and by posting the same for the same period at some public place near said land and real estate and at the front door of the court-house of said county of Ritchie; and it is further ordered 23 that the sheriff of said county of Ritchie do make said sale upon the terms, at the place, and after the notice herein set forth, and that said sheriff make return and report to this court of his proceedings under this order, and that he also return therewith the proceeds of the sale of said land and real estate so made by him; and it is further considered and ordered that the proceeds of said sale be applied in satisfaction of the above judgment of the plaintiff in this action, and that the surplus, if any, be paid over to the said defendant, The West Virginia Oil & Oil Land Company, but no sale shall be made under this order until the plaintiff, or some person for her, shall give bond, with sufficient security, to be approved by the clerk of this court, in a penalty of six thousand dollars, with condition that the plaintiff will perform such further order as may be made by the court in this action in case the defendant appear and make defense within the time prescribed by law.

WEST VIRGINIA, *ss:*

I, Will A. Strickler, clerk of the circuit court of Ritchie county, in the State aforesaid, do certify that the foregoing is a true copy from the records of said court, entered in law order book No. 6, pages 196, 197, and 198, on the 26th day of February, 1884.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 27th day of February, 1884.

WILL A. STRICKLER,
Clerk of the Circuit Court of Ritchie Co., W. Va.

24 In the Circuit Court of Ritchie County, West Virginia.

LAVINIA H. AUSTIN
vs.
M. V. BENTLEY & THE WEST VIRGINIA OIL & OIL LAND COMPANY.

In debt.

Plaintiff's costs:

Attorney	$5 00
Sheriff	3 00
Cl'k U. S. court, east. dist. Mich., for copies	6 35
Morris	10 00
Clerk	8 60
	$32 95

Attest:
[SEAL.] WILL A. STRICKLER, *Clerk.*

25 On the same day, to wit, March 1st, 1884, the following order was made and entered of record, to wit:

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY. } In Equity.

This day came A. I. Boreman, Esquire, and presented the petition of C. W. Penny in this cause and moved the court for leave to file the same, which leave is granted, and the same is accordingly now filed.

The petition referred to is in words and figures following, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. Mayhew & Co.
vs.
The West Virginia Oil & Oil Land Company.

To the honorable the judges of the said circuit court of the United States for the district of West Virginia:

Your petitioner, C. W. Penny, respectfully represents that he is a citizen of the State of Michigan and a resident of the city of
26 Jackson, in said State; that on the 18th day of December, 1883, your petitioner instituted an action of assumpsit in the circuit court of Ritchie county, State of West Virginia, in his own name and favor, against The West Virginia Oil & Oil Land Company for the sum of $3,271.25 damages, with legal interest thereon from the 14th day of December, 1883, until paid: that in said action of assumpsit and on the same day that the same was so instituted your petitioner sued out and caused to issue from the clerk's office of said circuit court of Ritchie county, State of West Virginia, an order of attachment, pursuant to the statute of said State, against the estate of said defendant, The West Virginia Oil & Oil Land Company, and to subject the same to the payment of the aforesaid demand of your petitioner, which order of attachment was directed to and placed in the hands of the sheriff of said county of Ritchie to be levied and executed; that on the 19th day of December, 1883, D. F. Haymond, sheriff of said county of Ritchie, in whose hands the said order of attachment was so placed as aforesaid, levied the same on the following-described land and real estate of said defendant, The West Virginia Oil & Oil Land Company—that is to say: All that certain tract or parcel of land situate, lying, and being in said county of Ritchie and State of West Virginia on the waters of Laurel Fork of Goose creek, Alum Cave Run, Short Run, and the waters of
27 Oil Spring Run, containing fourteen hundred and ninety-seven acres, more or less, which said tract is the eastern part of what is called Sims' Survey No. 27, it being the same tract of land conveyed by Walter Keeler to the West Virginia Oil & Oil Land Company by deed bearing date on the 2nd day of July, 1866, and recorded in deed-book No. 10, pages 492, 493, 494, and 495, county court clerk's office, Ritchie county, West Virginia, and is bounded and described as follows: On the west by a line of the Morgan Jones one-thousand-acre tract, &c., &c., excepting out of the tract above described one hundred acres at the northwest corner thereof, heretofore sold to one Humphrey Mountz; also all the right, title, and interest of the West Virginia Oil & Oil Land Company (the said defendant) in and to a certain piece or parcel of land near Petroleum, in said county of Ritchie & State of West Virginia (adjoining the above-mentioned tract), and bounded as follows—that is to say: Beginning at a white oak in line of Worth's general survey, and being a corner to lands claimed by Walter Keeler, successor to John

Harris; thence north seventy-three degrees east thirty-three poles, crossing Oil Spring Run, to a white oak and beech; thence south ten degrees west one hundred and forty-eight poles to a beech on the east bank of Oil Spring Run, corner to George Rutherford, 28 successor to Richard Tasher; thence with two of Rutherford'-lines north eighty-six degrees west twenty-six poles, crossing said run, to a white oak; south twelve degrees west eighty-two poles to an elm tree, corner to said Rutherford, standing on the north side of Goose creek at the mouth of a small drain; thence down said creek south sixty-one degrees west eighteen poles to a stake; thence south ten degrees west eight poles to a stake; thence north fifty-three degrees west one hundred and fifty-three poles to a stake on said Keeler's line or Worth's line; thence north forty-six and a half degrees east two hundred and seventeen poles to the beginning, containing one hundred and twenty-five acres, more or less, excepting, however, about three-fourths of an acre of said land conveyed to Burchard, as may be seen from the deed therefor on record in the clerk's office of the county court of said county of Ritchie, in deed-book No. 10, pages 359, 360, and 361, to which reference is here made.

Your petitioner further represents that at a term of said circuit court of Ritchie county, State of West Virginia, being held on the 26th day of February, 1884, the said action of *of* assumpsit came on trial before said last-mentioned court, and thereupon the said last-mentioned court proceeded to, and did, on the day and year last aforesaid, try said action of assumpsit and said attachment, 29 and rendered and gave judgment in said action and on said attachment against said West Virginia Oil & Oil Land Company; which judgment in said action was in favor of your petitioner against the said defendant, The West Virginia Oil & Oil Land Company, for the sum of thirty-three hundred and nine $\frac{90}{100}$ dollars' damages, with legal interest ther-on from the 25th day of February, 1884, until paid, and the costs of your petitioner in that behalf expended, which costs amount to the sum of twenty-six $\frac{65}{100}$ dollars; and it was further thereby then and there adjudged & considered that said attachment was issued on good and sufficient grounds, and by the statute of said State of West Virginia the said attachment is a lien on the above-described land & real estate of the said defendant, The West Virginia Oil & Oil Land Company, from the aforesaid date of the issuing & suing out of the same—that is to say, from the — day of December, 1883; and it was further, by the said judgment of the said circuit court of said county of Ritchie, then and there considered and ordered that the said land and real estate so levied on as aforesaid be sold for cash in hand, at the front door of the court-house of the said county of Ritchie, on a court day, after having first given sixty days' notice of the time, terms, and place of such sale by publishing the same for that period in a weekly 30 newspaper published in said county of Ritchie, and by posting the same for the same period at some public place near said land and real estate and at the front door of the court-house of said county of Ritchie; and it was thereby then & there further ordered that said sheriff of said county of Ritchie do make said sale upon the terms, at the place, and after the notice in said judgment & order so as aforesaid set forth; and it was thereby then & there ordered that said sheriff should make return & report to said circuit court of Ritchie county of his proceedings under said order of sale, and that he return therewith the proceeds of such sale; and it was thereby then & there further considered and ordered that the proceeds of said sale be applied in satisfaction of the above judgment of your petitioner in said action, and that the surplus, if any, be paid to said defendant, The West Virginia Oil & Oil Land Company, and your petitioner files herewith a legally-certified copy of said judgment & order of sale of said circuit court of said county of Ritchie, State of West Virginia, marked "Exhibit N," & making the same part of this petition.

Your petitioner further represents that the land and real estate of the West Virginia Oil & Oil Land Company levied on by virtue of
the aforesaid attachment & so ordered to be sold to satisfy
31 your petitioner's judgment aforesaid is what is known as oil
territory, and has beneath its surface large quantities of natural oil or petroleum, the greater part of which is of heavy gravity & is as valuable as any natural oil yet found in this country; that for years past the business of producing said oil from said territory by drilling wells & operating the same has been carried on by the lessees of said defendant, The West Virginia Oil & Oil Land Company, and great quantities thereof have been produced & sold in the market at good prices; that out of all said production the said defendant company reserved and has received a rent or royalty amounting to many thousands of dollars per year, and the said production, subject to & paying such rent or royalty, still continues and said territory is still of great value, all of which will fully appear from the pleadings & proofs, the reports of the master, commissioner, and receiver in the above entitled cause of F. L. B. Mayhew & Co. against The West Virginia Oil & Oil Land Company and others, to which reference is now here most respectfully made. Your petitioner further represents that, as is known to this court, the above entitled suit in equity of F. L. B. Mayhew & Co. against The West Virginia Oil & Oil Land Company has been pending in this honorable court for several years, the object and purpose of which
has been and is to subject the above-mentioned valuable
32 property of the West Virginia Oil & Oil Land Company to
the payment of certain alleged debts of said company and alleged liens against said property, the justice of which your petitioner does not admit; that such proceedings have been had in said last-mentioned suit that on the 17th day of November, 1883, this honorable court pronounced and entered a decree therein (to which reference is here made), whereby it adjudged that certain debts therein mentioned were liens on said oil property, and decreed and ordered the same to be sold to satisfy, pay, and discharge said debts and liens, the terms of which sale are in said decree set forth, and by said decree W. L. Cole and J. B. Jackson were appointed special commissioners to make said sale and to execute said decree, & were

thereby required to report their proceedings to this honorable court for its further action; and your petitioner represents that said commissioners, pursuant to said decree, have advertised and given notice that — will sell the said property under & by virtue of said decree on the first day of March, 1884; and your petitioner is now advised and insists that the aforesaid judgment and order of sale by the circuit court of said county of Ritchie in his favor against said West Virginia Oil & Oil Land Company is a lien for the full
33 amount of the damages, interest, & costs of said judgment
from the date of the suing out and issuing of his said attachment on the said land and real estate so decreed to be sold by said decree pronounced on said 17th day of November, 1883, in the above-entitled suit of F. L. B. Mayhew & Co. against The West Virginia Oil & Oil Land Company & others; and that if the said land and real estate shall be sold under said last-mentioned decree he is advised by counsel & insists that his aforesaid judgment and order of sale is a like lien on the proceeds of such sale.

Your petitioner therefore prays this honorable court that he be allowed to file this his petition in the above-entitled suit of F. L. B. Mayhew & Co. against The West Virginia Oil & Oil Land Company and others for the purpose of setting up and asserting his aforesaid lien against said land *land* and real estate so ordered to be sold as aforesaid by said decree in said last-mentioned suit; that his aforesaid judgment & attachment lien may be decreed to be a valid lien against said land and real estate, and that the payments of the full amount of the damages, interest, & costs thereof may be enforced against said land and real estate and against the proceeds of the sale thereof, if a sale shall take place under the decree last aforesaid, or under and by virtue of any other order or decree in
34 the said suit of F. L. B. Mayhew & Co. against The West Vir-
ginia Oil & Oil Land Company & others; and the further prayer of your petitioner is that this honorable court will grant unto him such other, further, and general relief in the premises as to equity and this honorable court may — meet.

And as in duty bound he will ever pray, &c.

C. W. PENNY,
By Counsel.

A. I. BOREMAN,
Solicitor & Counsel for Petitioner.

UNITED STATES OF AMERICA,
State & District of West Virginia, Wood County, } *To wit:*

C. W. Penny, the petitioner named in the foregoing petition, being duly sworn, says that the facts and obligations therein contained are *two*, except so far as they are therein stated to be upon information, — he believes them to be true.

C. W. PENNY.

Taken, sworn to, and subscribed before me this 1st day of March, 1884.

L. B. DELLICKER,
Clerk C. C. U. S., Dist. W. Va.

35 Exhibit "N" is in words and figures following, to wit:

In the Circuit Court of Ritchie County, West Virginia, February 26th, 1884.

C. W. PENNY

vs.

THE WEST VIRGINIA OIL & OIL LAND COMPANY.

In assumpsit.

This day came the plaintiff, by his attorney, and it appearing to the court that the said defendant, The West Virginia Oil & Oil Land Company, is a foreign corporation and a non-resident of this State, and that said corporation has land and real estate situated in this county of Ritchie; and that an order of attachment issued on behalf of the plaintiff in this action at the commencement thereof, to wit, on the 18th day of December, 1883; and that the same has been levied on said land and real estate by the sheriff of said county of Ritchie, to subject the same to the plaintiff's debt and claim herein; and it also appearing that an order of publication in said action and attachment has been legally entered and executed against said defendant corporation; and neither party requiring a jury herein, the court proceeded to ascertain the amount the plaintiff is entitled to recover in this action, and having heard the evidence the court doth ascertain and consider that the plaintiff recover against the said defendant, The West Virginia Oil & Oil Land Company, the sum of thirty-three hundred and nine dollars and
36 ninety cents damages, with legal interest thereon from this 25th
day of February, 1884, until paid, and his costs about his suit in this behalf expended; and it appearing from the return of D. F. Haymond, sheriff of said county of Ritchie, endorsed on the order of attachment issued in this action that, on the 19th day of December, 1885, he levied said order of attachment on the following-described land and real estate of said defendant, The West Virginia Oil & Oil Land Company—that is to say: All the certain tract or parcel of land situate, lying, and being in Ritchie county, in the State of West Virginia, on the waters of the Laurel Fork of Goose creek, Alum Cave Run, Short Run, and the waters of Oil Spring Run, containing fourteen hundred and ninety-seven acres, more or less, which said tract is the eastern part of what is called Sims' Survey No. 27, it being the same tract of land conveyed by Walter Keeler to the West Virginia Oil and Oil Land Company by deed bearing date on the 2nd day of July, 1866, and recorded in deed-book No. 10, pages 492, 493, 494, and 495, county court clerk's office, Ritchie county, West Virginia, and is bounded and described as follows: On the west by a line of the Morgan Jones one-thousand-acre tract, &c., &c., excepting out of the tract above described, one hundred acres at the northwest corner thereof, heretofore sold to one Humphrey Mountz; also all the right, title, and interest of the West Virginia Oil & Oil Land Company in and to a certain piece or parcel of land near Petroleum, in

37 Ritchie county, and bounded as follows: Beginning at a white oak in line of Worth's general survey and being a corner to lands claimed by Walter Keeler, successor to John Harris, thence north seventy-three degrees east thirty-three poles, crossing Oil Spring Run to a white oak and beech; thence south ten degrees west one hundred and forty-eight poles to a beech on the east bank of Oil Spring Run, corner to George Rutherford, successor to Richard Tasher; thence with two of Rutherford's lines north eighty-six degrees west twenty-six poles, crossing said run to a white oak south twelve degrees west eighty-two poles to an elm tree, corner to said Rutherford, standing on the north side of Goose creek at the mouth of a small drain; thence down said creek south sixty-one degrees west eighteen poles to a stake; thence south ten degrees west eight poles to a stake; thence north fifty-three degrees west one hundred and fifty-three poles to a stake on said Keeler's line or Worth's line; thence north forty-six and a half degrees east two hundred and seventeen poles to the beginning, containing one hundred and twenty-five acres, more or less, excepting, however, about three-fourths of an acre of said land conveyed to Burchard. Reference is had to deed-book No. 10, pages 359, 360, and 361, county court clerk's office, Ritchie county, West Virginia, for other particulars in the reference to said lands.

It is, therefore, considered and adjudged by the court that the said attachment issued on good and sufficient grounds, and that the plaintiff has a lien from the aforesaid date of the issuing
38 thereof for his damages, interest, & cost aforesaid on the land
and real estate so levied on; and it is further considered and ordered that the said land and real estate so levied on as aforesaid be sold for cash in hand at the front door of court-house of said county of Ritchie, on a court day, after having first given sixty days' notice of the time, terms, and place of such sale by publishing the same for that period in a weekly newspaper published in said county of Ritchie, and by posting the same for the same period at some public place near said land and real estate, and at the front door of the court-house of the said county of Ritchie; and it is further ordered that the sheriff of the said county of Ritchie do make said sale upon the terms, at the place, and after the notice herein set forth; that said sheriff make a return and report to this court of his proceedings under this order, and that he also return therewith the proceeds of the sale of said land and real estate so made by him; and it is further considered and ordered that the proceeds of said sale be applied in satisfaction of the above judgment of the plaintiff in this action, and that the surplus, if any, be paid over to the said defendant, The West Virginia Oil & Oil Land Company; but no no sale shall be made under this order until the plaintiff, or some person for him, shall give bond, with sufficient security, to be approved by the clerk of this court, in a penalty of thirty-five
39 hundred dollars, with condition that the plaintiff will per-
form such further order as may be made by the court in this action in case the defendant appear and make defense within the time prescribed by law.

STATE OF WEST VIRGINIA, } ss:
County of Ritchie, }

I, Will A. Strickler, clerk of the circuit court of Ritchie county, in the State aforesaid, do certify that the foregoing is a true copy from the records of said court, law order book No. 6, pages 198 & 199 and 200, February 26th, 1884.

In testimony whereof I *have* hereunto set my hand and affix the seal of said circuit court of Ritchie county, West Va., this 27th day of Feb'y, 1884.

[SEAL.] WILL A. STRICKLER,
Clerk of the Circuit Court of Ritchie County, W. Va.

40 In the Circuit Court of Ritchie County, W. Va.

C. W. PENNY
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY.

In assumpsit.

Plaintiff's costs:

Attorney	$5 00
Sheriff	3 00
Morris	10 00
Clerk	8 65
	26 65

Attest:
[SEAL.] WILL A. STRICKLER, *Clerk.*

41 On the same day, to wit, March 1st, 1884, the following order was made and entered of record, to wit:

F. L. B. MAYHEW & Co.
vs. } In Equity.
THE WEST VIRGINIA OIL & OIL LAND COMPANY.

On this first day of March, 1884, came Charles D. Coleman, in his own proper person, and presented in open court his petition and accompanying exhibits, praying relief in the premises, and, upon his motion, it is ordered that such petition and accompanying exhibits be, and the same are hereby, so filed.

The petition referred to is in words and figures following, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

FRANCIS L. B. MAYHEW and Others
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

To the honorable the judges of the circuit court of the United States for the district of West Virginia, setting:

The petition of Charles D. Coleman, of Plymouth, Michigan, re-

spectfully states and shows that he is a citizen of the United
42 States, residing in the State of Michigan, and as such is a citizen of the State of Michigan, and that he is a judgment creditor of the West Virginia Oil & Oil Land Company, one of the defendants named in the above-entitled cause; that said judgment has been obtained during the pending of this suit; that said judgment was rendered in favor of this petitioner in the circuit court for the county of Ritchie, West Virginia, on or about the 12th day of July, 1882, with interest thereon from on or about November 18th, 1881, and costs of suit to be taxed, and which have been taxed, as your petitioner is informed and believes, at the sum of $—; that the action in which said judgment was rendered was commenced in the said circuit court for the county of Ritchie on or about the 4th day of November, A. D. 1875, and was so commenced by an order or writ of attachment issuing out of said court by the clerk thereof, upon an affidavit showing that the West Virginia Oil & Oil Land Company was a foreign corporation and a non-resident of the State of West Virginia; that such attachment was duly levied upon the real estate of said defendant corporation situate in the said county of Ritchie, and being the same real estate described in the mortgage or deed of trust referred to in the pleadings in the above-entitled cause, on the 5th day of November, 1875, as will more fully appear by reference to Exhibit "A," filed and presented herewith, and to which petitioner prays leave to refer for greater certainty if necessary; that such proceedings were thereafter had upon such attachment and in such
43 action that such cause was brought on to trial before the said circuit court for the said county of Ritchie and a jury, in a trial at law, and a verdict and judgment was rendered therein on or about November 18th, 1881, for the sum of sixteen thousand five hundred and thirteen dollars and seventy-one cents ($16,513.71), with costs, to be taxed; that afterwards the defendant in said attachment and action filed a motion for a new trial therein, which came on to be heard before said court and was overruled and denied, and said court thereupon and on or about July 12th, 1882, rendered final judgment in said action in favor of your petitioner and against the West Virginia Oil & Oil Land Company for the sum of sixteen thousand five hundred and thirteen dollars and seventy-one cents ($16,513.71), with interest thereon from November 18th, 1881, and costs, to be taxed, and said court at the same time adjudged and determined that your petitioner's said judgment constituted a lien upon the real estate of the said defendant corporation from the 5th day of November, 1875, the time of levy under and by virtue of such attachment as aforesaid, as will more fully appear by a reference to Exhibit "B," which is filed herewith, or will be, in case the same is received in time, as although ordered long ago, as your petitioner is informed and believes, has not been yet received, and to which, when so filed, your petitioner prays leave to refer for greater certainty
44 if necessary, said Exhibits "A" and "B" being made a part of this petition as if the same were set forth and incorporated herein.

Your petitioner further respectfully states and shows that his said attachment was also levied upon a large amount of personal property situate upon said real estate as the property of the said defendant corporation, as will also appear by reference to said Exhibit "A" as aforesaid, all of which has since been sold and disposed of and spirited away and removed out of this State, as your petitioner is informed and verily believes, and that the said defendant corporation has now no other property, real or personal, situate in this State or elsewhere, out of which said judgment, or any part thereof, can be collected or enforced, except the real estate of said defendant corporation hereinbefore referred to and now in custody of Charles H. Shattuck, Esq'r., the receiver appointed by this honorable court in the above-entitled cause.

Your petitioner further states and shows that he is informed and believes that a reference was ordered and made by this honorable court to one of the master commissioners of this court to ascertain and report the several liens against the said real estate of the said defendant corporation, and the priority of such several liens in point of time, and that by the report of said master commissioner
45 it appears and is shown that your petitioner had a lien
upon said real estate of said defendant corporation, referred to hereinbefore, upon and from November 5th, 1875, and long prior to the liens of several of the creditors, who are provided for and directed to be paid out of the proceeds of the sale of the property of the said defendant corporation under and by virtue of the decree of this court declared and rendered in the above-entitled cause on or about November 17th, 1883, as, by reference to the said report of said master commissioner and said decree will more fully appear, and to which he prays leave to refer for greater certainty if necessary.

Your petitioner further respectfully represents to this honorable court that he is entitled to priority in the lien of his said attachment and judgment over the liens of several of the judgment creditors provided for and adjudged to be paid by said decree, and that he is entitled to be allowed and paid the amount of his said judgment out of the proceeds which may arise out of said sale prior and in preference to any of the judgment creditors provided for and directed to be paid by said decree, and he prays that he may be allowed to file this his petition and the exhibits referred to therein and presented therewith, and that this honorable court will ascertain, adjudge, and determine that your petitioner is entitled to priority in the lien of *of* his said attachment and judgment against
46 said real estate as and from November 5th, 1875, as deter-
mined by the said circuit court of Ritchie county, and that he is entitled to be paid the amount of his said judgment out of the proceeds which may be realized upon and from the sale of said real estate according to such date and according to the proper priority thereof, and prior to either or any of the several judgment creditors provided for and directed to be paid under and by virtue of said decree, and that your petitioner may have such other relief and may have such further relief in the premises as the nature of

the case may require and as shall be agreeable to equity and good conscience.

And as in duty bound he will ever pray, &c., &c.

C. D. COLMAN,
Sol's & of Counsel.
In person, C. D. COLMAN.

STATE OF WEST VIRGINIA, }
County of Wood, } *ss:*

Charles D. Colman, being duly sworn, says that he has read the foregoing petition subscribed by him and knows the contents thereof, and that said petition and the matters therein as stated are true according to his best knowledge & belief, and further says not.

C. D. COLMAN.

Subscribed and sworn to before me this 1st day of March, 1884.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, in said county, the day and year last above written.

[SEAL.] C. D. MERRICK,
Notary Public.

47 Exhibit "B" is in words and figures following, to wit:

In the Circuit Court of Ritchie County, West Virginia, July 11th, 1882, of June Term, 1882.

C. D. COLMAN
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY.

In debt upon an attachment.

This day came the parties, by their attorneys, and thereupon the defendant, by its attorney, moved the court to quash the attachment sued out in this cause because the affidavit upon which this attachment is founded does not appear to have been certified to have been made by a "credible person." The argument of counsel being heard thereon, and the said motion to quash having been submitted to the court, on consideration whereof, the court doth overrule the said motion. I- is therefore ordered that the said motion be, and the same is hereby, overruled; and it further appearing to the court that the attachment in this cause was properly sued out, and that the defendant named in said attachment — and was at the time of suing out of the same a non-resident of the State; and it further appearing that J. T. Utterback, constable of Ritchie county, to whom this attachment was directed, levied upon the property endorsed on said attachment by him on the 5th day of November, 1875, between the hours of 9 o'clock a. m. and 4 o'clock p. m. of that day, which said attachment and return of the said officers thereon is made a part of this order, and the plaintiff has a lien on the same for the
48 payment of the sum of $16,513.71, with interest thereon from the 18th day of November, 1881, together with the costs of

this suit, and that he is entitled to have the same sold, or so much thereof as will satisfy the debt, interest, and cost aforesaid, and it being suggested to the court by a decree properly certified and entered of record by the circuit court of the United States for the district of West Virginia, on the 19th day of March, 1881, in the case of F. L. B. Mayhew & Co. *vs.* The West Virginia Oil & Oil Land Company and others, in equity, that William E. Stevenson had been appointed a receiver of all the property and assets of the said The West Virginia Oil and Oil Land Company mentioned and included in a deed of trust mentioned in and filed with the bill in said cause, and which decree is filed in the pages of this cause, marked "X," no order of sale of the attached property shall take place at this time, the court not being fully advised as to the extent and power of said decrees hereinbefore referred to, *and* thereupon doth continue the hearing of said motion to sell said property until the next term of this court.

WEST VIRGINIA, *ss:*

I, Will A. Srickler, clerk of the circuit court of Ritchie county, in the State of West Virginia, do certify that the foregoing is a true copy of an order entered of record in the cause of C. D. Colman *vs.* The West Virginia Oil & Oil Land Company, in said court, on the 11th day of July, 1882, in law order book No. 5, pages 734 and 735.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 28th day of February, 1884.

[SEAL.] WILL A. STRICKLER,
Clerk of the Circuit Court of Ritchie Co., W. Va.

49 And on the same day, to wit, on the 1st day of March, 1884, the following order was made and entered of record, to wit:

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.
} In Equity.

On reading and filing the petition of Charles H. Walker, trustee, and others, praying, for reasons therein set forth, that the sale of said West Virginia Oil & Oil Land Company's lands and property be postponed for the period of thirty-one days from the time when the same is advertised to be sold under and by virtue of a decree, and also on reading and filing the answer to said petition, and due deliberation being had thereon, ordered by the court, on this first day of March, 1884, that the sale of the said property of the said West Virginia Oil & Oil Land Company under the decree passed in this action by the court on the 17th day of November, 1883, be postponed for the period of thirty-one days from the time at which such sale is now advertised to be held, so that the same shall be held on the first day of April, 1884, at the same place and time of day as specified in the present advertisement of sale, and that W. L. Cole and J. B. Jackson, the commissioners appointed to make such sale, are hereby ordered to adjourn and postpone said sale in accordance with this order.

This order is made on condition that said petitioners pay the costs and expense of such adjournment, and continue the ad-
50 vertisement thereof, to said commissioners on or before two o'clock in the afternoon of the first day of March, A. D. 1884.

(Signed) HUGH L. BOND,
C't Judge.

The deposit required is one hundred dollars.
J. J. JACKSON,
Dist. Judge.

And on another day, to wit, March 31st, 1884, the following order was made and entered of record, viz:

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.
} In Equity.

This day Charles H. Walker, trustee; D. C. Whitwood, Charles W. Noble; Edward C. Walker, administrator of the estate of Thomas F. Abbott, deceased, and Benjamin Vernor, by A. I. Boreman, their counsel, presented here in court their petition in the above-entitled cause, and said Charles H. Walker, trustee, and Lavinia H. Austin, by A. I. Boreman, their counsel, presented here in court their further petition in said cause, and said petitioners moved the court for leave to file said petitions, and the same having been seen and inspected by the court are allowed to be filed; and it is further ordered that copies of both petitions be served upon defendants, Heman Loomis and Emma Compton, executrix of Benjamin S. Compton, deceased, and that they be required to appear and plead, answer *a* demur*r*, on or before the first Monday in May, 1844, pro-
51, 52 vided that copies of both said petitions and of this order be served upon the said defendants within ten days from this date.

And it is further ordered that the sale of the premises heretofore decreed to be sold by special commissioners, and by them advertised to be sold on the first day of April, be, and the same is hereby, postponed until the first day of May, 1884, and that the costs of the further advertising said sale be paid by said petitioners.

53 On the 29th day of March, 1884, the following petitions were filed in the clerk's office, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Chancery.

FRANCIS L. B. MAYHEW *et al.*
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY *et al.*

Your petitioners, Charles H. Walker and D. C. Whitwood, Charles W. Noble, Edward C. Walker, administrator of the estate of Thomas F. Abbott, deceased, and Benjamin Vernor, all of the city of Detroit, respectfully represent:

1. That they are stockholders in the *in the* defendant corporation, and together own about twenty-nine hundred eighty (2,980) shares of the stock thereof; that said Charles H. Walker owns the same as trustee of the stock standing in the name of Olivia B. Hall and Israel Hall.

2. That said corporation is organized under the statutes of the State of Michigan, having its office at the city of Monroe, in said State, but from its organization in 1865 has been operating oil territory in Ritchie county, West Virginia.

3. That from the organization of said corporation one Benjamin S. Compton has been president of said corporation, with the exception of about one year from its organization, up to his death,
54 in July last, and during that time has practically had the
management and control of said corporation.

4. The said Compton, from the very organization of said corporation to his death, has been engaged in a settled plan to defraud the stockholders of said corporation and to manage said corporation for his own personal benefit, without regard to the interests of the stockholders or the wishes of its board of directors; that said Compton was the promoter of said organization, and in the very origin of the enterprise falsely represented to the original subscribers to the stock thereof the actual cost of the property purchased by him for said corporation, and received about three hundred thousand dollars ($300,000) more than he paid for said property; all of which was paid with the funds of the subscribers. In further carrying out that plan he from time to time, as president of the corporation, has drawn drafts in the name of said corporation for his own benefit, on which the company have been made liable by suit and otherwise, and this to a very large amount; that among other drafts of this character for which the company have been made liable are the following: To M. V. Bentley, about twenty-seven dollars ($27,000); to J. H. Carrington, about forty-three thousand dollars ($43,000); to B. F. Dunning, of about thirty thousand dollars ($30,000); and several of the claims that are proved against the corporation in the decree rendered in this cause are of this character.

55 5. As a part of this general plan of defrauding said corporation, on or about the 29th day of September, 1873, he procured the issue of bonds of said corporation to the amount of one hundred and fifty thousand dollars ($150,000) under the following circumstances: The articles of association of said corporation provides that there should be nine directors, and the by-laws provided

the manner in which special meetings of the directors should be called and that every director should be notified thereof; that in violation of these by-laws said Compton caused six of the nine directors to convene, of which he himself was one, without notice to the other directors, and then procured said six directors to vote for the issue of said bonds upon the pretense that they were needed to purchase in the interests of the lessees of the company's property in Ritchie county, West Virginia, and to authorize a dee- of trust to be executed upon the property of the company to secure the payment of said bonds, which is the deed of trust now being foreclosed in this case. Your petitioners aver that said meeting was an illegal one and had no authority to authorize the issue of such bonds and the execution of such deed of trust, and that the corporation has never authorized or ratified said issue; that said corporation never at any meeting thereof, or of the stockholders thereof, authorized or directed said bonds to be issued or said deed of trust to be executed, and never in any manner ratified or approved the same.

56 6. Said Compton did not use said bonds, or any of them, for the purposes for which they were claimed to be issued, but, on the contrary, used them for his own private purposes and pledged them for his own benefit, and disposed of them as he saw fit, and without the knowledge or consent of any of the officers, except in the case of those transferred to William D. Thompson, one of the parties to this cause; that said Compton died in July, 1883; that he then resided at Monroe, in the State of Michigan; that he left a last will and testament, which has been proved in Michigan & letters testamentary therein issued to Emma Compton, who resides at Monroe aforesaid and is the executrix named in said last will & testament & has qualified as such, & that there is no executor, administrator, or personal representation of the estate of said Compton within the State or dist. of West Virginia.

7. From the organization to the present time the business of said corporation has produced a net profit annually of not less than thirty-five thousand dollars ($35,000), and from that up to fifty thousand — ($50,000), and yet from the year 1873 no dividend has been declared and the profits of said business have really been converted by said Compton to his own uses and purposes.

57 8. When this suit was commenced, in or about November, 1878, the general counsel for the company advised Mr. Compton, as president and manager, to interpose a defense upon the ground of the invalidity of said bonds and deed of trust, but said Compton refused to do so, and no defense upon such ground was interposed.

9. Soon after the commencement of this suit and on the 19th of December, 1878, seven of the nine directors of said corporation, including Mr. Compton & said Heman Loomis, without any notice to the other two, met at Toledo, Ohio, and took certain action in relation to said bonds upon the representation of said Compton, as set forth in a preamble and resolution passed upon that day and now on file in said cause; said Compton then represented to said

directors that the said company were indebted to the following persons in about the following sums:

William D. Thompson	$50,000
Benjamin F. Dunning	20,000
Richard A. Storrs	22,000
Walter Keeler	16,000
C. D. Colman	15,000
Lavinia H. Austin	4,000
Mary Smith	3,000
C. W. Penny	1,500
And B. S. Compton	45,500

In point of fact, the company not only did not owe Mr. Compton the said sum of forty-five thousand five hundred dollars
58 ($45,500) or any other sum, but, on the contrary, he was very
largely indebted to the company. Said directors, trusting to the fraudulent representations of said Compton that said corporation owed him the sum of about forty-five thousand five hundred dollars ($45,000) and his fraudulent promise that he would pay all of said indebtedness, assigned to him the entire issue of said bonds in consideration of such indebtedness and his agreement, and by no other action of the company or directors thereof was any transfer authorized of any portion of said bonds to said Compton; said Compton never paid any of said indebtedness with his own funds or otherwise than with the funds of the company, and only a small portion thereof.

10. Subsequent to this action of December 19th, 1878, said Compton claimed to be the owner of eighty-six (86) of said bonds; said bonds were then overdue, and in said Compton's hands formed no right of action against the company, he being largely indebted to said company as aforesaid, and constituted no lien upon the property of the company included in said deed of trust; that afterwards, for the purpose of still further defrauding said company, said Compton transferred said eighty-six bonds to Heman Loomis, of Adrian, Michigan, one of the parties named in said suit, and the item allowed in this cause of forty-nine thousand one hundred and
59 eleven dollars & ten cents ($49,111.10) is based entirely upon
said eighty-six bonds; and the petitioners aver that said bonds in the hands of said Loomis were neither an equitable or legal claim against the company. The petitioners further aver that said Compton in his lifetime presented the same claim upon the eighty-six bonds to the master commissioner of this court for allowance, and for the most part said claim was disallowed, and after such disallowance he made the transfer to said Loomis.

11. That in September last, after the death of said Compton, the acting president and chief executive officer of the corporation, Mr. Charles W. Penny, and with two other directors of the corporation, met Mr. C. C. Cole, one of the solicitors for the complainant in this cause, at Toledo, Ohio, and had a conference with him in relation to resisting some of the claims, and especially the claims of Loomis & Compton, including the claim on the eighty-six bonds already

mentioned. They were to co-operate in making such defense, but without notice to the corporation or any of its officers, the decree in this case was rendered in fraud of the rights of the corporation; that when said Compton transferred said claim and said bond to said Loomis both of them well knew all the matters and things hereinbefore alleged.

12. Your petitioners further aver that great injustice has 60 been done to the said corporation in this suit by the fraudulent failure on the part of said Compton to properly employ and instruct counsel to defend against improper claims, and that at the time the decree of sale was taken and such sum allowed to Loomis the company were in no way represented in court.

Your petitioners therefore respectfully pray that the decree allowing the claims of said Heman Loomis in this cause be set aside and that a rehearing be had, especially in relation to the claims so allowed to Heman Loomis, or for such further or other relief as to the court may seem proper; and as in duty bound they will ever pray, &c.; and further that said Loomis, Emma Compton, as such executors, the said corporation, and said trustees under said deed of trust may be made parties thereto and required to answer the same.

CHARLES H. WALKER, *Trustee.*
DEODATU C. WHITWOOD.
CHARLES W. NOBLE.
EDWARD C. WALKER,
Administrator of the Estate of Thomas F. Abbott, Deceased.
BENJAMIN VERNOR.
By A. I. BOREMAN,
Their Solicitor & Counsel.

And your petitioners further pray that the sale of said premises under said decree be adjourned until after the hearing and decision of the matters herein alleged, and for such other further relief, &c.

61 STATE OF MICHIGAN, *County of Wayne,* } *ss:*

Charles D. Colman, being duly sworn, deposes and says that he has been a director of the West Virginia Oil & Oil Land Company since December, 1867; that he has been the secretary of said company and a member of the executive committee and the general counsel of said company since July, 1873, and as such has been familiar with all the business transactions connected with said company, and within the last four years has examined minutely into the various transactions of said Compton in connection with said company, when he first learned of the fraudulent practices of the said Compton in connection with the transactions of said company; that he has heard read the annexed and foregoing petition and knows the facts set forth therein of his own personal knowledge, and thus acquired from such examination, and that the facts set forth therein are true, except that he has no personal knowledge of the transfer of the claim of said Compton to said Loomis.

C. D. COLMAN.

Subscribed and sworn to before me this 18th day of March, A. D. 1884.

[SEAL.] FREMONT WOODRUFF,
Notary Public, Wayne County, Michigan.

62 State of Michigan, *County of Wayne:*

Charles W. Penny, being duly sworn, deposes and says that he was one of the original subscribers and corporators of the West Virginia Oil & Oil Land Company, and has been one of its directors and the vice-president and a member of the executive committee since 1871, and since the death of Benjamin S. Compton, in July last, he has been the acting president and chief executive officer of said corporation; that he has heard read the annexed and foregoing petition by certain of the stockholders of said company, and that he is familiar with all the material facts set forth in the said petition and knows the same to be true.

C. W. PENNY.

Subscribed and sworn to before me this 18th day of March, A. D. 1884.

[SEAL.] FREMONT WOODRUFF,
Notary Public, Wayne County, Michigan.

63 In the Circuit Court of the United States for the Dist. of West Virginia. In Chancery.

Francis L. B. Mayhew *et al.*

vs.

The West Virginia Oil & Oil Land Company *et al.*

The West Virginia Oil & Oil Land Company, by Charles W. Penny, acting president and chief executive officer of the said corporation, respectfully prays that the decree allowing the claims against the said corporation in this cause may be set aside and a rehearing granted as to the claims allowed Heman Loomis, and it respectfully refers to the petition of the stockholders of said company hereto annexed and the affidavits annexed thereto for the reasons why said decree should be opened and said rehearing had.

THE WEST VIRGINIA OIL
& OIL LAND CO.,
By C. W. PENNY,
Vice-President & Acting as President
and Chief Executive Officer thereof.

64 And on the same day, to wit, 29th day of March, 1884, the following petition was filed in the clerk's office, to wit:

In the Circuit Court of the United States for the Dist. of West Virginia. In Chancery.

Francis L. B. Mayhew and Others
vs.
The West Virginia Oil & Oil Land Company & Others.

Your Petitioners, Charles H. Walker, of the city of Detroit, in the State of Michigan, and Lavinia H. Austin, of the city of Buffalo, in the State of New York, respectfully represent—

That they are stockholders in the said defendant corporation; the said Charles H. Walker owns twenty-three hundred and five shares of the capital stock thereof as trustee of the stock standing in the name of Olivia B. Hall and Israel Hall, and the said Lavinia H. Austin owns eleven hundred and one shares of said capital stock in her own right.

And your said petitioners, adopting and reaffirming all and singular the allegations and statements contained in the petition of Charles H. Walker, Deodatu C. Whitwood, Charles W. Noble, Edward C. Walker, administrator, &c., and Benjamin Vernor, in this action, which was verified on the eighteenth day of March, A. D. 1884, in addition thereto and as a further and supplementary petition herein, respectfully show to this court—

65 That the said Heman Loomis in said petition named is not justly entitled to and ought not to have or receive the sum of thirty-nine thousand four hundred and seventy-six dollars and sixty cents, which is awarded to him in and by the decree which was made and entered herein on the seventeeth day of November, A. D. 1883, because heretofore and in or about the year 1874, the said Benjamin S. Compton, in said former petition named, pledged to one Benjamin F. Dunning forty of the bonds of said corporation in said petition described to secure a debt of thirty thousand dollars or thereabout, which said Compton pretended and alleged that said corporation owed to said Dunning, but which was in fact the personal debt of said Compton and not of said corporation; that thereafter said Dunning brought an action in some court in the State of New York against said corporation to recover the amount of said debt, and received a judgment therefor against said corporation, and that he subsequently brought an action on said judgment against said corporation in the circuit court of the United States for the district of West Virginia.

That while said action was pending in West Virginia said Dunning sold and assigned said New York judgment and said bonds to one Johnston N. Camden, and that said Camden thereafter recovered a judgment in said action so brought by said Dunning in West Virginia against said corporation for the amount of such debt
66 in the name of said Dunning, but for his own use and benefit.

That thereafter said corporation paid to said Camden about seventeen thousand dollars or eighteen thousand dollars on said judgment, but exactly how much it so paid your petitioners do not know and cannot state.

That in or about the month of September, 1879, a decree was made in this action whereby it was, among — things, adjudged that the plaintiffs herein had good title to twenty-five of said bonds (other than those assigned to said Camden as aforesaid), and that the same were a lien upon the property of said corporation, in whosever hands the same might be in good faith, and that said property was liable to be sold for the satisfaction thereof, and that soon after said decree was entered the persons who owned said twenty-five bonds sold and assigned the same to said Johnston N. Camden; and that said Camden also procured five more of said bonds from a person named Smith, or from some person to your petitioners unknown; that in or about June, 1881, the sum of thirty-five thousand dollars, or thereabouts, was owing to said Camden for and on account of said judgment and bonds, and that in or about June, 1881, the said Benjamin S. Compton paid to said Johnston N. Camden the amount owing to him as aforesaid, and thereupon the said Camden, at the request and by the procurement of said Compton, assigned and transferred the said Dunning judgment and the bonds 67 which he then held to the said Heman Loomis, and that the said sum of thirty-nine thousand four hundred and seventy-six dollars and sixty cents so awarded to said Loomis in and by said decree made herein on the 17th day of November, 1883, was so awarded and adjudged to said Loomis as such assignee of said Camden, and for and on account of said Dunning judgment and said bonds so assigned to him by said Camden, and not otherwise or different.

That said Heman Loomis did not pay or advance out of or from his own money or funds any, or, if any, then only a small part, of the money so paid to said Camden, but that said Compton paid the same or nearly all thereof out of and with money and funds that belonged to said corporation, and which he had wrongfully taken and received as the president and manager thereof.

That said Loomis took and received the assignment of said judgment and of said bonds from said Camden as the agent and for the benefit of said Compton, or upon some secret trust and agreement between them, for the purpose and with the intent on the part of them, or one or both of them, to cheat and defraud the said corporation, by pretending and alleging that they were in the hands of said Loomis valid claims and demands against said corporation and to compel it to pay the amount thereof to them, when, in truth and in fact, the same were not and are not, nor were — or on any 68 thereof, just, valid, or legal claims against said corporation in the hands of said Loomis and Compton, or either of them, nor on any they held or owned, by said Loomis, in good faith; all of which was well known both to said Loomis and to said Compton, and that so much of said decree as awards said sum of $39,476.60 therefor to said Loomis was obtained by collusion and fraud by and between said Loomis and said Compton, and therefore your petitioners pray that the said decree be opened and set aside, and that a rehearing therein be had as to the sums and amounts therein adjudged to be paid to said Heman Loomis, and that said Loomis, Emma Compton, as such executrix, the said corporation, and said trustee under said deed of trust, be made parties hereto and required to answer the same, and that the sale of such premises be adjourned under said decree until after the hearing and decision of the matters herein alleged, and for such other and further relief in the premises as is proper and necessary and which this honorable court may see fit to grant.

And as in duty bound your petitioners will ever pray, &c.

LAVINIA H. AUSTIN,
By GEORGE WADSWORTH,
Her Attorney.
CHARLES H. WALKER,
Petitioners.

A. I. BOREMAN,
Solicitor & Counsel for Petitioners.

69 UNITED STATES OF AMERICA.

DISTRICT OF WEST VIRGINIA,
State of West Virginia, County of Wood, } *ss:*

George Wadsworth, being duly sworn, says that he is the attorney of Lavinia H. Austin, one of the petitioners named in the foregoing petition, and is authorized to sign said petition and verify the same for her; that he has read said petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the reasons why said petitioner does not verify said petition are that she is not now within said district or State of West Virginia; that she is an elderly woman and is now quite ill and cannot attend to any business of importance; that she transacts all or nearly all of her business by agents and attorneys, and has no personal knowledge of most of the matters set forth in said petition, and relies concerning the same upon information derived from others; that deponent has acted as her attorney for nearly twelve years, and verily believes that he knows and is better acquainted with the matters alleged in said petition than she is, and that, should she personally verify it, she would do so largely
70 upon information derived from deponent; that the sources of deponent's information concerning said matters are various; that it has been a part of his duty for nearly twelve years to attend to the petitioner's interest in connection with the West Virginia Oil & Oil Land Company, and he has become familiar so far as he could with the business thereof, and of the dealings of Benjamin S. Compton in connection therewith; that the most of his information relating to the matters in said petition alleged was received from Charles C. Cole, Esq., who was the attorney and counsel for various parties in this suit (but not for said Compton or Loomis), and who was at one time, in another matter relating to said company, the attorney for said petitioner and others, and who has had occasion to and as deponent believes has examined very closely into all the said mat-

ters. Some of his information was derived from Charles H. Walker and from other persons interested in said corporation, and there is not an allegation or statement in said petition contained which deponent does not know to be true, or which he has not been informed by what he considers good and reliable authority to be true, or which he does not believe to be true.

GEORGE WADSWORTH.

I hereby certify that the foregoing affidavit was taken, subscribed, and sworn to by George Wadsworth, the affi*davit* therein named,
before me, the undersigned, a notary public in and for the
71 county of Wood and State of West Virginia, on the 27th
day of March, 1884.

Witness my hand and official seal this 27th day of March, A. D. 1884.

[SEAL.] A. F. LANG,
Notary Public of Wood County, West Virginia.

UNITED STATES OF AMERICA.

DISTRICT OF WEST VIRGINIA,
State of West Virginia, County of Wood, } *ss:*

Charles H. Walker, being duly sworn, says that he is one of the petitioners named in the foregoing petition; that he has read said petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes — to be true. Deponent further says that during the last six months he has spent much time in finding out the facts stated in said petition, and other matters relating to the affairs of the West Virginia Oil & Oil Land Company and Benjamin S. Compton's dealings therewith, and he has seen and conversed with many different persons, including stockholders and officers of said company and persons who had been attorneys or counsel for said Compton and said company, and
who were familiar with such affairs and dealings and with
72 the matters alleged in said petition; that a part of his infor-
mation was derived from the statements of Charles C. Cole,
Esq., who is mentioned in the foregoing affidavit of George Wadsworth; that he verifies said petition in part upon the information so derived and his belief of the truth thereof; that there is not a statement contained in said petition which he has not been informed is true by what he considers good and reliable authority or which he does not know to be true of his own knowledge.

And further says not.

CHAS. H. WALKER.

I hereby certify that the foregoing affidavit was taken, subscribed, and sworn to by Charles H. Walker, the affi*davit* therein named, before me, the undersigned, a notary public in and for the county of Wood and State of West Virginia, on the 27th day of March, 1884.

Witness my hand and official seal this 27th day of March, 1884.

[SEAL.] A. F. LANG,
Notary Public of Wood County, West Virginia.

The West Virginia Oil & Oil Land Company joins in the foregoing petition of Lavinia H. Austin, and Charles H. Walker, trustee, and prays that the court will allow the same to be filed and grant the relief to the said petitioners therein prayed for.

THE WEST VIRGINIA OIL &
OIL LAND COMPANY,
By A. I. BOREMAN, *Its Counsel.*

73 On another day, April 3d, 1884, the following order was made and entered of record, to wit:

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

Upon a petition of Lavinia H. Austin & others.

It appearing to the court that in the order made herein on the 31st day of March, 1884, that copies of the order and of the petitions in this case were to be served upon Heman Loomis and Emma Compton, executrix of Benjamin S. Compton, deceased, who are residents of the State of Michigan—

It is ordered that A. S. Mathews, deputy U. S. marshal east. dist. Michigan, be, and is hereby, designated and appointed to make such service.

And on another day, to wit, on the first day of May, to wit, the following order was made and entered of record, viz:

FRANCIS L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others. } In Equity.

This day came the West Virginia Oil & Oil Land Company, the defendant company in the above-entitled cause, by O. D. Barrett, Esquire, its attorney, and asked leave of the court to file its petition in the above-entitled cause, praying, amongst other things, for an order to postpone the sale of the defendant company's property, which is advertised to take place on this day. Upon consideration whereof the court is of opinion to grant leave to file the petition, but refused to interfere with the order of sale at this time. 74

It is therefore ordered that the petition be filed and set down for hearing on the first day of the next term of this court, at which time the commissioners making the sale of the defendant company's property under a former order of this court are to report their proceedings under said decree, leave being reserved to this petitioner to file an amended petition on or before that day.

And it is further ordered that no motion for the confirmation of that sale will be entertained prior to that date, to which time all proceedings as to confirmation of the sale are continued.

The petition referred to is in words and figures following, to wit:

In the United States Circuit Court of the District of West Virginia. Equity.

FRANCIS L. B. MAYHEW & Others
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY and Others.

To Hon. John J. Jackson, U. S. dist. judge for West Virginia, & to Hon. Hugh L. Bond, U. S. circuit judge:

The petition of the defendant, The West Virginia Oil and Oil Land Company, respectfully shows—

75 That the above-entitled suit was brought in said circuit court to enforce a deed of trust, the parties defendant being the defendant above named, a corporation organized under the laws of the State of Michigan, and the trustees under said trust deed, to wit, Charles G. Johnson, a citizen of Michigan, and Richard A. Storrs, a citizen of New York, their citizenship being so and truthfully alleged in the bill of complaint.

The complainants are all citizens of the State of New York, and their citizenship is so alleged in said bill of complaint.

That since the commencement of said suit parties defendant have been added, among others, James H. Carrington, A. C. Worth, and B. B. Valentine, all three of whom are, and were at the time they became parties defendant to said suit, citizens of New York, but whether their citizenship is set out in the pleadings in said cause your petitioner cannot state.

That a final decree has been passed in said cause, a certified copy of which is hereto annexed, to which petitioner refers and makes part of its petition.

That petitioner is wronged by the decree thus passed by said court without jurisdiction, among other things, in that it is decreed to pay to Heman Loomis $49,111.16 on account of certain 76 bonds secured by said trust deed and held by him, said Loomis, which said bonds were, until within the past two years, and for at least three years after the commencement of said suit, held and claimed by Benj. S. Compton, now deceased, late president of your petitioner.

That said Compton was made a party defendant by reason of his ownership of said bonds; that he presented them as such owner to the master commissioner for allowance, but said claim was disallowed on the ground that said bonds were transferred to him after their maturity and on conditions with which he, Campton, had not complied.

That after said disallowance said Compton assigned said bonds to said Loomis, as your petitioner is informed and believes, and on said information and belief charges that said assignment to said Loomis is upon trust to collect said bonds and to pay over the most of the proceeds, part to the wife of said Compton, and the other part to the brother and sister of his said wife.

That said information is the statement made to a director of petitioner by Charles H. Walker, of Detroit, Michigan, that John H.

Doyle, of Toledo, Ohio, told him, Walker, in substance that he drew the papers between Compton & Loomis, by which said trust was created, said information having come to said director, Charles D. Coleman, within the month of April, 1884.

77 That at the time of said assignment of said bonds, for a long time prior thereto, and up to the time of the death of said Compton, he, said Compton, was insolvent and indebted to your petitioner for many times the amount of said bonds and his estate is still so indebted.

That by final decree several judgment creditors were made parties defendant to said suit, and by the same decree your petitioner was decreed to pay their said judgments without giving it a day in court as to the same.

That the commissioners by said decree appointed to sell the property covered by said trust deed advertised the same for sale on the 1st of March ult.; said sale was by order postponed to the first, to April 1st, and then to the first of May next.

The want of jurisdiction was entirely overlooked until the 28th inst., and the facts about the trust under which said Loomis held said bonds was discovered, as it were, by accident, and no conceivable dil*l*igence on the part of your petitioner would have effected the discovery sooner.

Your petitioner desires to file a bill of review, both for errors of law on the face of the record and for material evidence discovered during the present month.

A statute of West Virginia specially provides that in granting leave to file a bill of review the court may restrain all further proceedings under the decree complained of, and your petitioner is unable to pay the money required of it by said decree, but it
78 states that its property decreed to be sold is valuable; that it
is in the hands of a receiver, and that in his hands it yielded in two years a net profit of about $75,000, which has been applied in payment of claims of the parties to said suit having priority.

Prayer.

Your petitioner prays for an order postponing said sale for a reasonable time to enable it to have prepared and filed a bill of review for errors of law on the face of the record and for material evidence discovered since the passing of said final decree.

C. D. COLMAN,
Solicitor for Petitioner.

B. F. BUTLER,
O. D. BARRETT,
Counsel for Petitioner.

DISTRICT OF COLUMBIA, *ss:*

I, Charles D. Colman, make oath that I am a director of the West Virginia Oil & Oil Land Company, and also its secretary; that I have read the petition by me above subscribed and know the contents thereof, and that the matters and things therein set forth, save those set forth on information and belief, are true, and those set forth on information and belief I believe to be true.

C. D. COLMAN.

Subscribed and sworn to before me this 29th day of April, 1884.

[SEAL.] JOHN W. PARSONS,
Notary Public.

79 F. L. B. Mayhew & Co.

vs.

The West Virginia Oil & Oil Land Company, B. S. Compton, R. A. Storrs, W. D. Thompson, W. H. Beach, A. C. Worth, Benjamin B. Valentine.

This day the Toledo National Bank, R. S. Blair, and Benjamin B. Valentine presented their petitions to the court, accompanied by transcripts of judgments rendered in favor of the petitioners, respectively, against the West Virginia Oil and Oil Land Company, in manner and amounts as follows—that is to say: Two judgments to R. S. Blair for the sum of five hundred dollars each, with interest from the 15th day of June, 1881, and $40.50 costs; to the Toledo National Bank the sum of nine thousand seven hundred and seventy-three $\frac{40}{100}$ dollars, with interest from the 17th day of November, 1883, and $70.30 costs; and to Benjamin B. Valentine the sum of eight thousand nine hundred and thirty-one dollars, with interest thereon from the 2d day of October, 1883, and $58.95 costs, which petitions, being inspected by the court, are ordered to be filed, and said petitioners are admitted as parties to this suit for the purpose of protecting their interests therein.

The exceptions filed by any and all of the parties to the reports of the master in this suit are respectively waived, and this cause coming on this 17th day of November, 1883, to be heard upon the matters presented by the record, was argued by counsel and considered by the court; and it is adjudged, ordered, and decreed that the
80 following-named persons, respectively, have proved and established claims against the West Virginia Oil and Oil Land Company, and that the debts so established are liens upon the lands hereinafter more particularly described of the West Virginia Oil and Oil Land Company, and that such debts are liens on said land stated in orders of priority and amounts, respectively, as follows:

First. William D. Thompson, the sum of sixty-one thousand two hundred and sixty-seven $\frac{79}{100}$ dollars, with interest from the 17th day of November, 1883; and Richard A. Storrs, the sum of forty-seven thousand six hundred and sixty-three $\frac{29}{100}$ dollars, with interest from the 17th day of November, 1883; Heman Loomis, the sum of thirty-nine thousand four hundred and seventy-six $\frac{61}{100}$ dollars, with interest thereon from the 17th day of November, 1883, the said debts of Thompson, Storrs, and Loomis being equal in priority and entitled to rateable payment and satisfaction.

Second. James H. Carrington, the sum of forty-six thousand nine hundred and thirty-four $\frac{58}{100}$ dollars, with interest from the 17th day of November, 1883.

Third. A. C. Worth, the sum of two thousand six hundred and fifty $\frac{8}{100}$ dollars, with interest thereon from the 17th day of November, 1883.

Fourth. W. H. Beach, the sum of two thousand eight hundred and eighty-eight $\frac{58}{100}$ dollars, with interest from the 17th day of November, 1883.

81 Fifth. The Toledo National Bank, the sum of nine thousand eight hundred and forty-three $\frac{70}{100}$ dollars, with interest from the 17th day of November, 1883, and R. S. Blair the sum of five hundred and ninety-three $\frac{16}{100}$ dollars, with interest from the 17th day of November, 1883, the debts of said bank and of said Blair above mentioned being of equal priority and entitled to rateable payment and satisfaction.

Sixth. R. S. Blair, the further sum of five hundred and ninety-two $\frac{66}{100}$ dollars, with interest thereon from the 17th day of November, 1883.

Seventh. Benjamin B. Valentine, the sum of nine thousand and fifty-six $\frac{93}{100}$ dollars, with interest from November 17th, 1883.

Eighth. Heman Loomis, the further sum of forty-nine thousand one hundred and eleven $\frac{16}{100}$ dollars, with interest thereon from the 17th day of November, 1883, in addition to the sum hereinbefore decreed in favor of said Loomis.

And it is further adjudged, ordered, & decreed that said Thompson, Storrs, & Heman Loomis, as holders of the bonds secured by the deed of trust dated October first, 1873, in the record of this cause described, are entitled to have the real estate and property therein mentioned sold for the sums of money so found due them, respectively, and that the other creditors above named, parties hereto, are entitled to have the amounts respectively decreed to them paid out of the real estate and property of the said The West Virginia Oil & Oil Land Company, and to have the said real estate sold in satisfaction of said liens.

82 And it is further adjudged, ordered, and decreed that Charles H. Shattuck, special receiver in this cause, do proceed to collect and reduce into money the oils, accounts, bills receivable, and other property in his hands or owing to him as such receiver, and that he shall at once apply the funds in his hands and which may hereafter come into his hands as such receiver as follows: First, to the payment of all the costs in this suit, and then to R. A. Storrs the amount decreed in his favor in full, the said Thompson and Loomis assenting thereto, and he shall then apply the residue to the payment of the amount due the said Thompson, the said Loomis assenting thereto, and all other sums coming into his hands from money or due to him he shall apply in like manner upon the debts herein decreed in the order of their priority, and he shall report the amount so distributed by him and the balance due upon each of said debts on which he may have made payments to this court on the first day of the month next ensuing after the date of this decree.

And it is further adjudged, ordered, and decreed that the said defendant, The West Virginia Oil & Oil Land Company, do pay unto the creditors hereinbefore named the several amounts respectively found in their favor, after crediting the funds paid by the receiver, as provided above, and the court being of the opinion that the several holders of the liens herein adjudicated are entitled to have 83 their debts paid out of the land aforesaid and the rent, issues, and profits thereof in the respective order of their priorities as above set forth, it is further adjudged, ordered, and decreed that unless the said The West Virginia Oil & Oil Land Company, or some one for it, do, within thirty (30) days from the date of this decree, pay unto the several persons, respectively, the sums and amounts severally due to them and decreed to be paid to them as aforesaid, then W. L. Cole and J. B. Jackson, who are hereby appointed commissioners for that purpose, shall, after first giving notice of the time, terms, & place of sale by advertisement printed for six successive weeks in some one of the newspapers published, respectively, in Ritchie county, West Virginia, and in Monroe, Michigan, and in Parkersburgh, West Virginia, and by a like notice, posted for a like period at the front door of the court-house of Ritchie county, sell at public auction, at the Julianna-street entrance of the United States court-house and post office in Parkersburgh, West Virginia, all the following property and real estate—that is to say: All that certain tract or parcel of land situated, lying, and being in Ritchie county, in the State of West Virginia, on the waters of the Laurel Fork of Goose creek, Alum Cave Run, Short Run, and the waters of Oil Spring Run, containing thirteen hundred and ninety-seven acres of land; said tract is the eastern part of 84 what is called Simms' Survey No. 27, and is the same tract which was conveyed to the West Virginia Oil & Oil Land Company by Walter Keeler and wife by deed dated July 2nd, 1866, and recorded in the office of the clerk of the county court of Ritchie county, West Virginia, in deed-book No. 10, on pages 492, 493, 494, and 495; also all that certain other tract or parcel of land situate, lying, and being in the county of Ritchie aforesaid, containing one hundred and twenty-four and one-quarter acres, which said tract is bounded and described as follows, to wit: Beginning at a white oak in a line of Worth's general survey, and being a corner to land claimed by Walter Keeler, and running thence north 73° east 33 poles, crossing Oil Spring Run, to a white oak and beech; thence S. 10° W. 148 poles to a beech on the east bank of Oil Spring Run to land now or late of George Rutherford; thence along said Rutherford's line north 86° west 26 poles, crossing said run, to a white oak; thence south 12° W. 82 poles to an elm tree, corner to said Rutherford, standing on the north side of Goose creek at the mouth of a small drain; thence down said creek south 61° west 18 poles to a stake; thence south 10° west 8 poles to a stake; thence north 53° west 153 poles to a stake on Keeler's line; thence north 46½° east 217 poles to the place of beginning; and also all and singular the tubing lines belonging to the West Virginia Oil & Oil Land Company on the premises hereinbefore described; 85 together with all and singular the property, improvements, machinery, appliances, all the appurtenances belonging thereto and owned by the West Virginia Oil & Oil Land Company on the property above mentioned and described, all the property aforesaid being the same mentioned and described in the papers and proceedings in this cause.

The said sale shall be made upon the terms of cash in hand on the day of sale; but before said commissioners, or either of them, shall proceed to make any sale under this decree they shall enter into a bond, with security to be approved by one of the judges or by the clerk of this court, in the penalty of two hundred thousand dollars, conditioned for the faithful performance of their duties as such commissioners under this decree, and for their paying over and accounting for all moneys and other property that may come into their hands by virtue hereof.

And it is further adjudged, ordered, and decreed that until the further order of this court the said special receiver shall continue to have charge and possession of the property of the said defendant company, and of the rents, issues, and profits thereof, subject to all orders and decrees made with reference to such receivership.

86 I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do certify that the foregoing is a true copy of an order made and entered of record in the case of F. L. B. Mayhew & Co. *vs.* The West Virginia Oil & Oil Land Company, pending in said court on the 17th day of November, 1883.

In testimony whereof, I hereunto set my hand and the seal of said court this 25th day of January, 1884.

[SEAL.] L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

On the 5th day of May, 1884, the following demurrers in writing were filed in the clerk's office of said court, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
ss.
WEST VIRGINIA OIL & OIL LAND COMPANY & Others, defendants.

The demurrer of Heman Loomis to a petition filed in above cause by C. H. Walker, trustee, and others against the said Loomis and others:

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said petition to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur thereto, and, for cause of demurrer, showeth that the petitioners have not by their said petition 87 made such a case as entitles them in a court of equity to any relief from or against this defendant touching the matters contained in the said petition or any of such matters.

Wherefor-, and for divers other good causes — demurrer appearing in the said petition, this defendant doth demur thereto and to all the matters and things in said petition contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to said petition, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

HEMAN LOOMIS,
By Counsel.

B. M. AMBLER,
Parkersburgh, W. Va., Solicitor for Def'd't.

I hereby certify that in my opinion the foregoing demurrer of Heman Loomis, defendant, to the petition of C. H. Walker, trustee, and others, petitioners, is well founded in law and proper to be filed in the above cause.

B. M. AMBLER,
Solicitor & Counsel for Defend't.

STATE OF MICHIGAN
Lenawee County, } *To wit:*

Heman Loomis, being duly sworn, does depose and say that he has read the foregoing demurrer of Heman Loomis to the petition in this suit, and that the said demurrer is not interposed for the purpose of delaying said suit or any proceedings therein.

88 HEMAN LOOMIS.

Sworn and subscribed before me in my —, county of Lenawee and — of Michigan.

In testimony whereof I have hereto set my hand and affixed my official seal this 28th day of April, 1884.

[SEAL.] CHARLES R. BOTHAM,
Notary Public of Lenawee County & State of Michigan.

And on the same day, May 5th, 1884, the following demurrer in writing was filed in the clerk's office of said court, to wit:

The Demurrer of Heman Loomis to a Further and Supplemental Petition Filed in the Above Cause by C. H. Walker, Trustee, & Others, against the said Loomis & Others.

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
vs.
WEST VIRGINIA OIL & OIL LAND COMPANY and Others.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said further supplemental petition to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur thereto, and, for cause of demurrer, showeth that the petitioners have not by their

89 said petition made such a case as entitles them in a court of equity to any relief from or against this defendant touching the matters contained in the said petition or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said further and supplemental petition, this defendant doth demur thereto and to all the matters and things in said petition contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to said petition, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

HEMAN LOOMIS,
By Counsel.

B. M. AMBLER,
Parkersburgh, W. Va., Counsel for Heman Loomis.

I hereby certify that in my opinion the foregoing demurrer of Heman Loomis, defendant, to the further and supplemental petition of C. H. Walker, trustee, and others, petitioners, is well founded in law and proper to be filed in the above cause.

B. M. AMBLER,
Solicitor & Counsel for Defendant.

STATE OF MICHIGAN, } *To wit:*
Lenawee County, }

Heman Loomis, being duly sworn, does depose and say that he has read the foregoing demurrer of Heman Loomis to the petition in this suit, and that the said demurrer is not interposed for the purpose of delaying said suit or any proceedings therein.

90 HEMAN LOOMIS.

Sworn and subscribed before me in my —, county of Lenawee & State of Michigan.

In testimony whereof I have hereto set my hand and affixed my official seal this 28th day of April, 1884.

[SEAL.] CHARLES B. BOTHUM.
Notary Public of Lenawee County & State of Michigan.

91 On the 22d day of May the following report of sale was filed in the clerk's office:

Report of Sale Made by J. B. Jackson and W. L. Cole.

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

To the honorable judges of said court:

The special commissioners who were appointed by the decree made in the above cause on the 17th day of November, 1883, to make sale of the real estate and property in said decree mentioned and described, beg leave to report as follows:

They fixed upon the 1st day of March, 1884, at 2 o'clock p. m., as the time to offer said real estate and property for sale, and they caused notices of the sale to be published once in each week for six successive works, prior to the time of sale so fixed, in each of the following newspapers, to wit: The State Journal and the Parkersburg Sentinel, both of which papers are published at Parkersburgh, Wood county, West Virginia; the Ritchie Gazette, which is published at Harrisville, Ritchie county, West Virginia; and the Monroe Commercial, which is published at Monroe, in the State
92 of Michigan. They also caused notices of the sale, by printed
hand-bills, to be posted for six weeks prior to said 1st day of March, 1884, at the front door of the court-house of Ritchie county, as well as at many other public places in said Wood and Ritchie counties, and upon and near the real estate to be sold.

Copies of the notice so published in each of said papers and posted as above mentioned are herewith filed as part of this report.

On the first day of March, 1884, and before the said special commissioners had offered said property for sale, an order was made in said cause by said court adjourning the sale until the 1st day of April, 1884. A copy of said order is hereto attached as part of this report.

Pursuant to said order your commissioners caused the notice of sale and notice of adjournment thereof to be published in each of the newspapers above mentioned once in each week during the month of March, 1884, and caused copies of said notice of sale and the adjournment to be posted at the front door of the court-house of Ritchie county during the same time; and they also caused notice of said sale by printed hand-bills to be posted at the various other public places where the original notice of sale had formerly been posted as aforesaid.

Copies of the notice of sale and adjournment so published and posted are herewith filed as a part of this report.

On the 30th day of March, 1884, by an order made in said
93 cause by said court, the sale of said real estate and property
was again adjourned until the first day of May, 1884. A copy of said order is hereto attached.

Pursuant to this last order your commissioners caused said notice of sale, with a notice of both of the adjournments thereof so ordered by the court, to be published in the several newspapers above mentioned once in each week during the month of April, 1884, and caused copies of said notice and said adjournments to be posted at the front door of the court-house of Ritchie county for the same time, and notices by printed hand-bills that said sale would be made on the first day of May, 1884, were posted in the various other places above mentioned.

In addition to the foregoing publication of said notice of sale your commissioners sent notices of said sale and of each adjournment thereof through the mail to many persons who they supposed would be interested therein or might desire to become the purchaser of said property.

Pursuant to the notice so given, your commissioners, on the 1st
of May, 1884, at two o'clock in the afternoon, offered for sale at
public auction, at the Julianna-street entrance of the United States
court-house and post office in the city of Parkersburgh, in said dis-
trict of West Virginia, the real estate and property in said
94 decree and notice mentioned and described, and A. K. Leon-
ard, the auctioneer employed by your commissioners, in their
presence and under their direction, continued to offer said property for sale at public auction for about an hour, during which time many persons bid therefor, and Charles H. Shattuck, being the highest bidder, said real estate and property was knocked off to him at the sum of one hundred and sixty-three thousand dollars, and the said Shattuck became the purchaser thereof at that price.

A memorandum in writing of said sale was made and signed in duplicate by said Shattuck and your commissioners, and the copy retained by the commissioners is herewith filed as part hereof.

The said Shattuck has paid to your commissioners the said sum of one hundred and sixty-three thousand dollars, as required by the said decree of November 17th, 1883, and they now hold the same subject to the order of the court.

All of which is respectfully submitted.

J. B. JACKSON,
W. L. COLE,
Special Commissioners.

95 The expenses of sale are as follows:

For publishing original notice of sale:

The State Journal	22 10	
" Parkersburg Sentinel	22 10	
" Ritchie Gazette	22 10	
" Monroe Commercial	17 05	
		83 35
For printing hand-bills		3 00
		86 35

This sum was paid by the receiver out of funds in his hands as per order of court made on the — day of April, 1884.

The first adjournment was made on motion of Walker and others, and upon condition that they should deposit one hundred dollars to pay the costs of advertising the adjournment.

The one hundred dollars were deposited with the clerk of the court, and out of that deposit the costs of advertising the first adjournment have been paid as per order of court of April —, 1884, as follows:

For publishing notice of sale and notice of the adjournment thereof:

The State Journal	18 35	
" Parkersburg Sentinel	18 35	
" Ritchie Gazette	18 35	
" Monroe Commercial	10 40	
		65 45
For printing hand-bills		3 00
Paid by L. B. Dellicker, clerk		68 45

96 The second adjournment was made on the motion of the same parties, and on condition that they pay the costs thereof, which are as follows:

For publishing notice of sale and both adjournments:

The State Journal	$20 00	
" Parkersburg Sentinel	20 00	
" Ritchie Gazette	20 00	
" Monroe Commercial	11 75	
		71 75
For printing hand-bills		3 00
		74 75
For posting notice of sale, postage, &c.		1 80
Auctioneer Leonard for crying sale		
Commissioners for selling and disbursing money		

Summary of Costs.

Publishing original notice	86 35	(paid).
" first adjournment	68 45	(paid).
" second "	74 75	
Posting notices, &c.	1 80	
Auctioneer		
Commissioners		

J. B. JACKSON,
W. L. COLE,
Special Commissioners.

97, 98 On the 22nd day of May, 1884, the following memorandum of sale was filed in the clerk's office, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

At a sale of the real estate and property mentioned and described in the decree entered in the above cause on the 17th day of November, 1883, made by J. B. Jackson and W. L. Cole, special commissioners, on the first day of May, 1884, said real estate and property was knocked off to C. H. Shattuck upon his bid therefor of one hundred and sixty-three thousand dollars ($163,000), that being the highest bid offered; therefore said real estate and property was then sold to said Shattuck at said price of $163,000, which sum of money the said Shattuck has paid to said special commissioners, to be held by them until the said sale is reported to court, and subject to such order or decree as said court may make touching said sale.

Signed in duplicate, one copy to be held by said Shattuck and the other by said commissioners.

J. B. JACKSON,
W. L. COLE,
Com'rs.
C. H. SHATTUCK.

99, 100 And on June 10th, 1884, the following order was made and entered of record, to wit:

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others. } In Equity.

This day Heman Loomis, by counsel, tendered to the court a petition to set aside the sale made in this cause on the first day of May, 1884, and also tendered exceptions to the report of sale made on said May 1st, which petition and exceptions are ordered to be filed, and the matters arising thereon are now set down to be heard on the 18th day of the present month.

And the order heretofore entered in this cause allowing the company, defendant, leave to file an amended petition herein by the first day of the term is now extended until the 13th instant, and it is ordered that the consideration of said amended petition when filed be set for the 18th.

101 On the 10th day of June, 1884, the following "petition to vacate sale" was filed in the clerk's office, to wit:

The Petition of Heman Loomis, One of the Parties of Record and Named in the Above-Styled Suit.

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY and Others.

To the honorable the judges of the said circuit court of the United States for the district of West Virginia:

Humbly complaining, your petitioner, Heman Loomis, represents and shows to the court that he is a creditor of the West Virginia Oil & Oil Land Company, to whom was adjudged by a decree entered in this cause, on the 17th day of November, 1883, as a lien against the real estate of said company, an aggregate sum of $88,587.71, with interest thereon from the said November 17th, 1883, as appears by the records of — honorable court in this cause, a copy of said decree being now annexed as part hereof; and your petitioner prays that the said decree may be treated and considered as much a part of this petition as though fully and at large set forth herein.

102 The commissioners appointed by the court to make sale of the property described in the decree advertised the property and appointed the 1st day of March, 1884, as the day of sale; on March 1st thecourt ordered the sale to be adjourned to April 1st, and on the 31st day of March, 1884, the court ordered that the sale be adjourned until the 1st day of May, 1884.

Long prior to the first day of March, 1884, your petitioner entered into a joint contract with every one of the several parties in whose favor liens had been adjudged, except R. A. Storrs, whose debt was paid by the receiver in full by said decree of November 17th, 1883. A copy of said contract is herewith filed as part hereof, marked Exhibit H. L. 500, by which contract your petitioner and the other parties thereto believed and intended that their interest at said expected sale were fully and amply protected; and it is submitted that said arrangement was fair, proper, and prudent, in that it was intended and provided that the property should be made to bring a sum at least sufficient to cover the entire amount of such liens.

Your petitioner relied upon that contract as a full protection to his interests, and he and the other lienors aforesaid assigned the full amount of their claims to J. N. Camden, named in said contract.

The decree of November 17th, 1883, had clearly determined the exact status and rights of every party named in it, and had

103 fixed the order, amounts, and priority of every claim adjudged, so that said claims were proper to be used in payment of the purchase-money at the sale.

In the latter part of March, 1884, C. H. Walker and others filed petitions in this cause attacking said decree of November 17th, and on or about the 29th of March the court, in ruling on the admission of the petitions and the relief thereby sought, used expressions which were written out by one of the honorable judges of this court and filed in the cause, and a copy of which is now made part hereof, marked H. L. 501.

Some days after that your petitioner's counsel, B. M. Ambler, learned from counsel representing all other parties to that contract, except Mr. Camden, that they considered the contract at an end unless your petitioner would furnish sufficient cash money at the sale to cover whatever was bid, upon the basis of his liens, because, under the ruling made in March on the filing of said petitions the court had unsettled the status of Loomis as a lien creditor, and had entirely altered his rights and position since the decree had been made in November, 1883.

Your petitioner's counsel (Ambler) did not admit the correctness of the position thus taken on the contract, and on or about the 19th day of April went to see the said mutual agent of the parties there-

under, Mr. J. N. Camden (a member of the U. S. Senate), at
104 Washington, and was assured that Mr. Camden saw no such
difficulty as had been suggested, and that Loomis might rely upon his carrying out the contract, and Ambler fully understood and believed that Mr. Camden intended to bid at the sale, and to bid the full amount of the liens adjudged under the contract.

Your petitioner lives in Michigan, at Adrian, is closely engaged as the treasurer of a bank there, is over 74 years of age, and has been obliged to entrust to others the management of his interests in this suit, because he could not give the proper attention.

No one except B. M. Ambler was representing the petitioner in the matters above referred to occurring since March.

Two (2) days before the day of sale Ambler for the first time learned from Mr. Camden that Mr. Camden's counsel had advised him that he (Camden) had mistaken the effect of the action of the court so far; that Camden had concluded not to bid unless arrangements were made to provide money for whatever might be necessary of the Loomis claim to buy the property or cover the liens.

(Ambler had before that learned the opinion of Mr. Camden's counsel, but Ambler still believed that Mr. Camden would bid, as had been understood in Washington.) When Mr. Camden declined to bid unless some arrangement was made as to the Loomis claim
he stated that he believed some arrangement might be made
105 between Loomis & himself. Your petitioner's brother, who
also lives in Michigan, and who had full authority to act for him, was then telegraphed for, and reached Parkersburgh during the night preceding the sale. After several hours' conference on the forenoon of the day of sale it was found that no arrangement could be made, and Mr. Camden said he could not assume the responsibility of bidding under the circumstances, and he accordingly declined to do so.

Your petitioner does not impute bad faith to Mr. Camden, but the fact is he was surprised by the misunderstanding, and he did not know until very shortly before the sale was cried that arrangements made by him, and upon which he relied with absolute confidence, would not protect him, and this knowledge was constructive only.

It was then too late for your petitioner to do anything further to protect himself, and, with no means of helping himself, among strangers, it was required for the protection of his liens that, with nearly $90,000.00 tied up in this court and adjudged in his favor, he should furnish that same amount in cash to cover it.

The sale then took place while your petitioner's hands were tied, while there was a cloud over his title to the money decreed in his favor, and while he stood on a footing different trom that of every other party named in said decree, and for all practical purposes his
liens and debts were unascertained.

106 At the time of the sale the amount necessary to satisfy all
debts mentioned in the decree of November 17th, 1883, after applying the oil & proceeds of oil in the receiver's hands, was less than $187,000, as your petitioner's counsel has been reliably informed

& believes, and your petitioner's liens were thus nearly one-half of the amount for the satisfaction of which the real estate was being sold.

The property sold for $163,000, which is not sufficient to cover your petitioner's liens by over $23,000, without regard to probable charges for costs, expenses, &c. The property is worth over $187,000. Its net annual revenue, after paying all expenses, taxes, & charges, is over $30,000, and, if sold under favorable circumstances, the property would have brought at least $187,000.

Your petitioner further informs the court, as shown by the report of sale, that the purchaser at said sale was Mr. Charles H. Shattuck; and your petitioner alleges, a fact not appearing by said report, that the said Charles H. Shattuck, whose name is given in said report as purchaser of the property, is the same person who was heretofore appointed receiver in this cause by a decretal order entered herein on the — day of ——, 1883, and who is named in said decree of November 17th, 1883, and the said Shattuck was, on the day of sale, and who has ever since continued to be, such receiver, having 107 the exclusive control, management, and possession of the property named in said decree, and being paid and employed out of the funds and estate coming to his hands, as compensation for his services in the fiduciary relation he assumed in entering upon the discharge of his trust, and your petitioner is advised and he protests that the said Shattuck was disqualified from making such purchase, and charges that the sale is void and that it would be against public policy and sound principles of equity jurisprudence for the court to confirm a sale against objection to an officer in whose care and guardianship had been entrusted the property purchased.

And your petitioner is advised and charges that the reasons for setting aside this sale apply with greater force from the fact that the property sold at less than its value, and at a loss to the interests which your petitioner believes the receiver is in law supposed *ex officio* to represent.

Your petitioner relies upon and charges the existence of the following grounds for setting aside the sale made on the 1st day of May, 1884, to the receiver who purchased the property in his own interest:

First. That the property was sold at an inadequate price its annual net revenue being over $30,000.00; the fee-simple interest was worth more than $163,000.00.

108 Second. That your petitioner's interests were sacrificed and prejudiced by the circumstances under which the sale was made, in the following particulars, to wit:

(*a*.) A misunderstanding and mistake had occurred, which deprived the petitioner of the power of bidding to the amount of his claim.

(*b*.) Within a few hours before the sale your petitioner first learned that arrangements carefully made by him would not be carried out.

(*c*.) He was thus taken by surprise and prevented from protecting his interests by matters unforeseen and unexpected.

(*d.*) The sale took place when the court was supposed to have modified, on an *ex-parte* application, the decree made on November 17th, 1883, to the extent of holding your petitioner's rights in obeyance.

(*e.*) These things had happened notwithstanding extraordinary diligence and despite every precaution that prudence could suggest.

Third. That a sale of real estate, while the amounts and priorities of liens were not understood, was in violation of the rules affecting substancial property rights as established by the laws of West Virginia.

Fourth. That Charles H. Shattuck stood in such relations, before, at, and since the time of the sale, to the parties, to the court, and the property that he had no right to acquire a personal interest in the property, or to use the advantages his peculiar situation gave him for his personal gain or on his personal account.

109 For the reasons assigned, your petitioner prays that the sale be set aside, and that the court will not confirm the purchase made by said receiver; and he further prays that he may be allowed to urge such other matters and objections to said sale as may come to his knowledge or as he may be advised are necessary and proper to be alleged against it; and he further prays that the court will not permit any further sale of said property until his rights are settled and adjudicated, and that the court will make such other order and grant such other relief in the premises as in equity may be deemed right and just and as the nature of your petitioner's case may require; and as in duty bound he will ever pray, &c.

HEMAN LOOMIS,
By Counsel.

B. M. AMBLER,
Solicitor for Petitioner, Parkersburgh, W. Va.

UNITED STATES OF AMERICA,
District of West Virginia, } *To wit:*

This day personally appeared before the undersigned authority B. M. Ambler, whose name is signed as solicitor to the foregoing petition of Heman Loomis, and the said Ambler, being duly sworn, says that he prepared said petition and is the B. M. Ambler therein referred to; that all statements made in that petition in connection with the name of said Ambler are true of affiant's 110 personal knowledge, and that affiant knows that C. H. Shattuck, named as purchaser, at the sale objected to and appointed as receiver in the main cause, as stated in the petition, is one and the same person; and affiant also knows that affiant was entrusted by Loomis to take care of Loomis' interests in the suit and with reference to the sale, and that the affiant did not know until the forenoon of the day of sale that Mr. J. N. Camden would not bid upon the property in such manner as to protect Loomis' interests.

The affiant says further that he makes this affidavit only for the purpose of covering facts that lie in his personal knowledge of his client.

B. M. AMBLER.

Subscribed and sworn to before me this 10th day of June, 1884.

L. B. DELLICKER,
Clerk C. C. U. S., Dist. W. Va.

STATE OF MICHIGAN,
County of Lenawee, } *To wit:*

This day personally appeared before me, Charles B. Bothum, a notary public of said county, in my county aforesaid, Heman Loomis, who, being duly sworn, upon his oath says that he is the petitioner named in the foregoing petition, to which his name is signed under his authority by B. M. Ambler, his West Virginia counsel, and that affiant has read over said petition and 111 understands its contents, and that the facts and allegations therein stated, so far as stated upon his knowledge, are true, and, so far as stated upon information, he believes them to be true, and that affiant believes that the petition is in all respects true.

HEMAN LOOMIS.

Sworn and subscribed befere me in my said county on this 4th day of June, 1884, as witness my hand and official seal hereunto set and affixed.

[SEAL.] CHARLES B. BOTHUM,
Notary Public in and for Lenawee Co., Michigan.

STATE OF MICHIGAN,
County of Lenawee, } *ss:*

I, Thomas M. Hunter, clerk of said county of Lenawee and of the circuit court therein, being a court of record, having a seal, do hereby certify that Charles B. Bothum, whose name is subscribed to the annexed affidavit and therein written, was, at the time of taking such affidavit, a notary public in and for said county, duly commissioned and qualified, and duly authorized by law to take the same; and further, that I am well acquainted with the handwriting of such notary public and verily believe that the signature to the said affidavit is genuine, and, as such, entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at Adrian, this 4th day of June, A. D. 1884.

[SEAL.] THOMAS M. HUNTER, *Clerk.*

112 Exhibit Heman Loomis 500 is in words and figures following, to wit:

This agreement, made this — day of November, 1883, between J. N. Camden, J. H. Carrington, W. H. Beach, A. C. Worth, Toledo National Bank, R. S. Blair, B. B. Valentine, and Heman Loomis:

Whereas on the 17th day of November, 1883, a decree was made by the circuit court of the United States for the district of West Virginia in a suit in equity therein pending, wherein F. L. B. Mayhew & Co. are plaintiffs and The West Virginia Oil & Oil Land Company and others are defendants, whereby it was ascertained and adjudged that certain large sums decreed in favor of the parties hereto, respectively, are liens upon the property of the defendant company and that said property be sold for the satisfaction thereof—said decree is hereby referred to and made part hereof—the said J. N. Camden being the assignee of W. D. Thompson mentioned in said decree and entitled to receive the sum decreed to said Thompson;

And whereas the parties hereto desire to protect their several interests and to insure the sum realized at the sale of said property, under said decree, shall be sufficient to pay the several debts thereby ascertained and established:

Now, therefore, the parties hereto have covenanted, and they do hereby covenant and agree, to and with each other as follows:

First. That when said property is offered for sale under
113 said decree that the said J. N. Camden shall purchase the
same for the mutual benefit of the parties hereto, if it sell for a sum not exceeding the aggregate amount of said claims adjudicated against it, including interest and costs and expenses of sale.

Second. That if said Camden shall become the purchaser of said property at any sale made under said decree, whether for the full aggregate of said claims, costs, and expenses aforesaid or any less sum, then the several parties hereto do severally assign and transfer to the said Camden, in trust, the several amounts decreed in their favor, respectively, by said decree; and the said Camden, as the agent and trustee of all the parties hereto, is authorized to apply the said several debts and amounts in payment of the purchase-money required at such sale; and in any settlement made between the said Camden and the commissioners authorized to make said sale the said Camden is hereby authorized, as such agent and trustee, to execute and deliver to such commissioners all proper receipts and papers that may be necessary for all and any lien, debt, or claim that may be held by the parties hereto, respectively, as fully and effectively as though the parties hereto were present and did such act in person.

Third. And the said J. N. Camden covenants and agrees with the parties hereto, and each of them, that if he shall become the purchaser of the said property as aforesaid he will at once execute and place on record, in the county of Ritchie, a declaration of trust declaring that he holds the said property for the use and benefit of
the parties hereto for the payment of the debts adjudicated
114 in their favor, respectively, by said decree, to be paid in the
order hereinafter particularly set forth; and the said Camden further covenants and agrees that, if he shall purchase said property as aforesaid, he will hold the same in trust for said parties and each of them, and will control and manage the same to the best interest and advantage of said parties, and that he will collect and apply the rents, issues, and profits of said debts monthly, charging nothing for his time, trouble, or services as such trustee but only the actual necessary expenses of executing said trust.

Fourth. And each of the other parties hereto do hereby covenant and agree with the said Camden, in consideration of his covenants herein contained, that as soon as the debts due them, respectively, by him as such trustee, they will release and quit-claim to him all their right, title, and interest in and to said property; and, further, that the payment of each and of all of the debts named, as herein provided, shall operate as a full release and discharge from the parties hereto, and the title to the said property shall, by the operation of said payments, stand vested in said J. N. Camden in fee-simple.

Fifth. It is further covenanted and agreed by and between the parties hereto that the rents, issues, and profits of said property, after deducting necessary expenses as aforesaid, shall be paid out and applied by said trustee as follows:

1. The balance, if any, due to J. N. Camden, assignee 115 of W. D. Thompson, shall be fully paid.

2. Then forty per cent of the proceeds of said property shall be paid to Heman Loomis and sixty per cent thereof to the said Carrington, Worth, Beach, Toledo National Bank, Blair, & Valentine, according to their rights and priorities as fixed by the said decree, as between the six parties last named, until they and each of them are fully paid.

3. Then sixty per cent of said proceeds shall be paid to said Carrington so far as to reimburse and indemnify him such sums of money, if any, as he may be held liable for as maker, acceptor, or endorser of two certain bills of exchange, for the payment of which the said West Virginia Oil & Oil Land Company is primarily liable, one of which bills is supposed to be held by Marietta Arnold, of Michigan, and is for the sum of $1,500, and the other is held by the National Bank of Commerce, in New York, and is for the sum of $2,431.39.

4. After the payment of the foregoing amounts the said property shall be held in trust for the payment of any balance due said Heman Loomis until the same is fully paid.

Witness the following signatures and seals:

(Signed) J. N. CAMDEN. [SEAL.]
(Signed) HEMAN LOOMIS, [SEAL.]
By B. M. AMBLER,
Attorney-in-Fact.
(Signed) J. N. CARRINGTON. [SEAL.]
(Signed) A. C. WORTH. [SEAL.]
(Signed) B. B. VALENTINE. [SEAL.]

116 Exhibit H. L. 501 is in words and figures following, to wit:

The petitioners came into court with a petition, the payer of which and the facts stated therein are broad enough to entitle it to be called a bill of review. It has been served upon no party in the cause as yet, and the only objection- to filing it have been argued by members of the bar, who suppose from hearing it read that *ex merv.* motion they ought to advise the court against permitting the petition to be filed. The court can see upon inspection and from the remarks of one of the counsel for petitioners that this petition may be used, if allowed to be filed, as is at present moved, to reverse all that has been adjudicated in the case, but other counsel assure us that it is intended for no such purpose; this is a mere motion for leave to file, by allowing which the court determines nothing upon the merits. The petition will be allowed to be filed, and will be set for hearing on such day as will be agreeable to the parties, after due notice to the defendants named in it and service of copy upon them and time to file an answer and take such testimony and file such affidavits in response as they may be advised to do.

The petition alleges the fraudulent character of two claims allowed in the decree of sale and asks the court to postpone the sale ordered until they have opportunity to show that such claims ought not to be allowed.

117 It is to ask the court for a great exercise of power to do this upon a mere *ex-parte* petition. There are many other parties claiming a share of the proceeds of sale who have no notice of this petition. They have a decree in their favor. They are resting securely upon that. It would be arbitrary to alter the time of sale without hearing their objections to such postponement. The petition has not been served upon them, and the day of sale is to- proximate to do so now.

If the intention of the petitioners, as stated by counsel, be to contest only the two claims which they allege to be fraudulent they can do that, if they have the right to do so, over the fund when the commissioners report the sale to the court and bring the money in here. It seems to us, after the long litigation in this cause, that it would be unjust to all other creditors to postpone this sale now to await the determination of this controversy with the title of two creditors.

The mere filing of this petition, however, it is likely, has led many, as they could not know what action the court would take upon it, to feel uncertain as to whether the sale would take place upon the day now fixed for it; and for that reason, as well because of a strong desire to give every opportunity for all parties to bid, we will postpone this sale to the first day of May next, when it shall take place p-reemptorially, and this postponement shall not take place till the petitioners have entered into surety to pay the costs of the continued advertisement of the sale. Upon the report of the sale by the commissioners the funds claimed by the defendant- in these petitions will be directed to be paid into court to await the result of these petitions.

118 Exceptions of Heman Loomis to confirmation of sale are in words and figures following, to wit:

Exceptions of Heman Loomis, One of the Parties of Record in the Above Cause, to the Report of Sale Filed in Above Cause by W. L. Cole and J. B. Jackson, Special Commissioners, said Sale having been made on the 1*st day of May,* 1884, *to one Charles H. Shuttuck.*

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

The said Heman Loomis excepts to said report of sale, and by way of such exception, and for objection to the confirmation of such sale, he assigns the following grounds:

First. That the property sold at a grossly inadequate price and for a sum insufficient to cover amounts due to said Loomis.

Second. That expressions used by the court and appearing of record, on the — day and on the 31st days of March, 1884, left in doubt the rights of Heman Loomis adjudged by the decree passed in above cause on the 17th day of November, 1883, under which decree said sale was being made.

119 Third. That by reason of a misunderstanding of his position as holder of a lien on the property sold, and because he was surprised at the last moment and immediately preceding the sale, he was unable to bid or to make any arrangement whereby the property could bring the amount of his claim or an amount nearer the value of the property.

Fourth. That the property was knocked off to Charles H. Shattuck, who at, before, and since the sale was and is the receiver named in said decree of November 17th, 1883, and at the time of the sale stood in such relation to the parties in this suit, to the court, and to the property that he had no right to acquire a personal interest in the property then offered for sale.

Fifth. That at the time the sale occurred the claim of Loomis, representing nearly one-half of the amount due on the liens for which the sale was made, was practically unascertained, and all rights thereunder left in doubt.

Sixth. That a sale of real estate while the amounts and priorities of liens were not understood and accurately fixed was in violation of the rules affecting substancial property rights as established by the law of West Virginia, where the land in controversy was located.

And in support of the foregoing exceptions the said Loomis
120 refers to all of the pleadings, orders, records, and proceedings in this cause, and to the petition filed by him, praying that said sale be set aside, and to the affidavits filed with said petition, and he respectfully insists that the sale should be set aside, and objects and excepts to the confirmation thereof.

He further states that if said sale is confirmed he will be much injured and prejudiced thereby.

And because of the foregoing and other grounds of exception & objection appearing upon the record and proceedings herein he prays that the court will set aside said sale and not confirm the same.

Respectfully submitted,

HEMAN LOOMIS,
By Counsel.

B. M. AMBLER,
Counsel & Solicitor for Heman Loomis.

121 On the 18th day of June, 1884, the following affidavit was filed in the clerk's office, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

To the honorable judges of the said circuit court of the United States for the district of West Virginia:

C. H. Shattuck, being duly sworn, makes the following statement in answer to a certain petition and exceptions filed in the above-entitled cause by one Heman Loomis, in so far as said petition and exceptions refer and and object to his purchase of the property of the defendant, The West Virginia Oil & Oil Land Company, at a sale thereof made by W. L. Cole and J. B. Jackson, special commissioners, on the 1st day of May, 1884, under a decree of this court made and entered in the above-entitled cause, at which sale this affiant became the purchaser, as appears by the report made by the said special commissioners herein:

Affiant says that it is true that he did purchase said property at said sale on said 1st day of May, 1884, at the sum of one hundred and sixty-three thousand dollars ($163,000) & paid to said 122 commissioners said purchase-money; that he made said purchase in his own name for convenience, but in fact his interest in said purchase is to the extent of only about twenty thousand dollars, and as to the residue of said purchase he was acting and did act for and on behalf of other persons, who furnished the money to pay for their respective undivided interests in said property at the said price, none of whom, except one, were present in person or by other agent than affiant at the sale; that said said sale was made for cash, and affiant says and believes that the price so bid and paid by him was a fair and reasonable price for said property, and he believes and says that if said property were again offered for sale for cash under said decree that the same could not be sold for the sum so bid & paid by him; indeed, affiant believes that at another sale for cash it would fall far short of the sum so bid and paid by him. Affiant further says that said sale was a public sale, in a public place, and after notice of the time place and terms thereof had been fully published and given for more than the period required by said decree; that as affiant is informed and believes from his own personal

observation at the time, all the unpaid creditors provided for in said decree (including said Heman Loomis) and a considerable number of the stockholders in said West Virginia Oil & Oil Land Company were present in person, or by their agents, when said sale was made as aforesaid, and had full opportunity to bid on said property,
123 or otherwise take such action as they might have thought
necessary or proper, but no objection, so far as this affiant knows, was interposed or made by them, or any of them, to the said — progressing or being made by said commissioners, nor to the sale as made by said commissioners at the time it was made; that there were also present at said sale a number of oil producers and oil dealers, who were familiar with the said property and its value, and with the value of oil property generally, and there were also present a considerable number of citizens, some of whom were men of capital and engaged in large business enterprises in the community.

Affiant says it is true that, by an order made in said cause on the — day of November, 1883, he was appointed special receiver in said cause of the rents and profits and product of said property in place of one William E. Stevenson, who had resigned the position, and that affiant entered upon his duties as such receiver on the 17th day of November, 1883, and continued such receiver at the time said sale was so made as aforesaid, but as affiant then understood and believed, and as he still understands and believes, and is now advised, he was not as such receiver invested with the fee-simple or *corpus* of said property, or with any right or title therein, but only with the rents and profits and products thereof, to be held by him subject to the order of the court, nor had he the right or authority in law to sell or dispose of the same or any part thereof in any
124 manner whatsoever; and affiant in fact says that the sale was
made by said special commissioners wholly independent of him; that he had no communication, directly or indirectly, with them on the subject prior to the sale; that he did not take any part in said sale or attempt to influence any person in regard thereto in any manner whatsoever; that the sale was in progress for a considerable time, with ample time and opportunity to any person to bid who desired to do so, and many bids were made by different persons, and that during this time affiant was present and openly bid on the property several times, and finally, after dwelling some time on his last bid, the auctioneer and commissioners struck the same off to him at the price aforesaid, and he paid the money therefor to said commissioners, and he insists that said sale was in all respects legal and fair, and that the said price was reasonable.

As to the other matters set forth in said petition and exceptions so filed by said Heman Loomis, and not appertaining to the facts connected with the purchase so made by this affiant as aforesaid, and the law arising upon such facts, this affiant is not advised and knows nothing of his own knowledge.

C. H. SHATTUCK.

Subscribed and sworn to this 18th day of June, 1884.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

125 And on the 30th day of June, 1884, the following order was made and entered of record, to wit:

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL AND OIL LAND COMPANY, W. D. THOMPSON, R. A. STORRS, & Others.
} In Equity.

This cause came on to be heard on the 18th and 19th days of the present month upon the motion to confirm the sale made by J. B. Jackson & W. L. Cole, special commissioners under the decree passed and entered in this cause on the 17th day of November, 1883, and upon a petition filed herein by Heman Loomis to set aside the sale of the property of the defendant company made on the first day of May, 1884, and upon exceptions taken by said Loomis to the report of said sale returned to court by said special commissioners, and upon an application made by Wm. P. Thompson and Oliver H. Payne to have the sale set aside and offering to bid at a resale of the property the sum of $173,000.00, and was argued by counsel.

In consideration whereof it was, on the 19th day of June (instant),
adjudged that all the objections and grounds of exception assigned
by Heman Loomis against the confirmation of the *of the* said sale,
made by said special commissioners to C. H. Shattuck on May 1st,
be overruled, except the first; and that the said first ground of ob-
jection would be sustained, provided that the said Wm. P.
126 Thompson & Oliver H. Payne should, within ten days, enter
into a bond, with approved security, in the penalty of two
hundred and fifty thousand dollars, payable to Lyman B. Dellicker, the clerk of this court, conditioned that at any further sale of said property that may be made by decree in this cause, the said Thompson & Payne, or some one for them, will bid the sum of one hundred and seventy-three thousand dollars, and that they will comply with the terms of such decree of sale in case they shall become the purchasers of said property at said sum of one hundred and seventy-three thousand dollars; and provided further, that the said Thompson & Payne should deposit in the registry of this court within the said ten days the sum of ten thousand dollars in cash, as additional security for their compliance with the offer made by them, and that the said Loomis shall, within the said ten days, refund the sum of $143.65, paid by Lavinia H. Austin for advertising, and pay to the purchaser at said sale the sum of $407.50, the same being the interest accruing upon the amount of the purchase-money actually paid from the day of sale to the date of this decree:

Now, on this 30th day of June, 1884, the court doth find that the
said Wm. P. Thompson and Oliver H. Payne did, on the 23d day
of June, 1884, deposit the said $10,000 in the registry of the court,
and entered into a bond in*to* the penalty of $250,000.00, with
127 W. N. Chancellor as security, conditioned in all respects as
required by the court, and the said bond and security are
now approved and accepted, and the said bond is ordered to be filed
and preserved.

And it further appearing that the said Loomis has paid the $551.15 required of him within the time indicated by the court—

It is adjudged, ordered, and decreed this 30th day of June, 1884, that the matters occurring in this cause since the 18th instant be entered at this time as part of the record, which is here accordingly done, *nunc pro tunc*, and that the first of said exceptions to said sale be sustained, and that the said sale be, and is hereby, vacated, set aside, and admitted.

It is further ordered, adjudged, and decreed that the said J. B. Jackson and W. L. Cole, special commissioners, do repay to Charles H. Shattuck the purchase-money received by them from the said Shattuck and all securities delivered by said Shattuck to them on account of said purchase-money.

And it is further adjudged, ordered, and decreed that Messrs. J. B. Jackson & W. L. Cole, special commissioners, do proceed at once, in accordance with the terms and directions of the said decree passed and entered in this cause on the 17th day of November, 1883, to make sale of the property therein described and set forth.

128 The bond referred to is in words and figures following, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY *et al.*

Know all men by these presents that we, William P. Thompson, Oliver H. Payne, and William N. Chancellor, are held and firmly bound with Lyman B. Dellicker, the clerk of said court, his executors and administrators, in the penal sum of two hundred and fifty thousand ($250,000) dollars; for the faithful payment whereof, well and truly to be made, we bind ourselves, our and each of our heirs, representatives, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 21st day of June, 1884.

The condition of the above obligation is such that

Whereas a decree was entered in the above cause of F. L. B. Mayhew & Co. *vs.* The West Virginia Oil and Oil Land Company *et al.* on the 17th day of November, 1883, whereby it was, among other things, decreed that the real estate and property of the West Virginia Oil and Oil Land Company mentioned and described in said decree should be sold by commissioners appointed for that purpose; and

129 Whereas a sale was made by said commissioners under said decree on the 1st day of May, 1884, at which sale one C. H. Shattuck became the purchaser of said property at the sum of one hundred and sixty-three thousand ($163,000) dollars; and

Whereas the said William P. Thompson and Oliver H. Payne have proposed and offered to said court sitting in this cause that if the sale so made as aforesaid to said Shattuck be set aside that at any further sale of said property mentioned in said decree which may be made by decree in this cause they, the said Thompson and Payne, will bid at any such sale the sum of one hundred and seventy-three thousand ($173,000.00) for said property:

Now, therefore, if the said William P. Thompson and Oliver H. Payne, or some one for them, in case the sale so made on May 1st, 1884, be set aside, shall bid on said property at any future sale thereof that may be made by decree in this cause the said sum of one hundred and seventy-three thousand ($173,000.00) dollars, and if the said Thompson and Payne shall further comply in all respects with the terms of such decree of sale in case they shall become the purchasers of said property at said sum of $173,000.00, then this obligation to be void; otherwise to remain in full force and virtue.

W. P. THOMPSON. [SEAL.]
O. H. PAYNE. [SEAL.]
W. N. CHANCELLOR. [SEAL.]

130 STATE OF OHIO,
Cuyahoga County, } *ss:*

Personally appeared before me W. P. Thompson and Oliver H. Payne, who acknowledged the above signatures to be their free act and deed.

Signed and sworn to this 21st day of June, A. D. 1884.

[SEAL.] F. W. LOTHMAN,
Notary Public.

STATE OF WEST VIRGINIA,
Wood Co., } *ss:*

Personally appeared before me W. N. Chancellor, who acknowledged the above signature to be his free act and deed this 23d day of June, A. D. 1884.

[SEAL.] C. S. McCANDLISH,
Notary Public.

131 F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY and Others. } In Chancery.

This day came W. P. Thompson and Oliver H. Payne, by their attorney, and presented to the court a petition in the above-entitled cause, and on their motion the same is ordered to be filed.

Said petition is in words and figures following, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

To the honorable judges of said court:

The petition of W. P. Thompson and O. H. Payne respectfully shows that on the 23d day of June, 1884, they caused to be deposited in the registry of the court the sum of ten thousand dollars, which is now in the hands of the clerk of this court, and will be there held until the resale of the property of the said company is made under the order made in this cause, or until it is released by this honorable court.

This large fund is being held without paying any interest or giving any benefit to your petitioners. They have no desire to change their position or status in any respect, except to have this money earn interest, and they are advised that your honors have 132 ample power in the premises, and that it will not prejudice the rights of any one to allow this fund to accumulate interest during the time that your petitioners are deprived of its use.

The said sum of $10,000 is now deposited in the Citizens' National Bank of Parkersburgh, West Virginia, and no interest is being paid thereon.

Your petitioners have received an offer from the First National Bank of Parkersburgh that said First National Bank will pay interest on said sum during the time it may be left or deposited with said First National Bank at the rate of four (4) per cent. per annum.

The said First National Bank is in all respects as strong, solvent, and responsible as said Citizens' Bank, and is ample security for the amount above mentioned.

The money now is simply deposited with the Citizens' Bank and will be just as secure with the First National Bank, which will give such further security as may be required.

Your petitioners pray that an order be entered allowing and requiring *that* the fund to be loaned, and for such other relief as may be by your honors deemed proper.

And as in duty bound *he* will ever pray, &c., &c.

O. H. PAYNE,
W. P. THOMPSON,
By B. M. AMBLER,
Their Counsel.

133 And on July 30th, 1884, the following order was made and entered of record, to wit:

In the Circuit Court of the United States, District of West Virginia.
In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

The petition of W. P. Thompson and O. H. Payne having been filed in the clerk's office of this court on the 16th day of July, 1884, praying that the sum of $10,000.00, which they had caused to be deposited in the registry of this court, be loaned out at interest during the period that it is being held in the registry and subject to the orders of the court—

This day the said petition was presented to the court and an order asked in accordance with the prayer thereof; whereupon it is ordered that notice be given by said petitioners to the creditors in this suit, in person or to their attorneys, that a hearing on said petition will be had on the 30th day of July, 1884, before one of the judges of said court in chambers.

And it appearing that a copy of said petition and notice has been served on the several parties by acceptance thereof by the parties, by their attorneys, and there being no objection to granting the prayer of said petition:

It is further ordered that L. B. Dellicker, clerk of this court, 134 do at once proceed to loan out the $10,000.00 now in his custody to the credit of this suit as aforesaid to the person or corporation that will pay the highest rate of interest therefor and furnish acceptable and satisfactory security until such time as the court may require said sum, and shall order payment of the same on or after the 15th day of September, 1884; but before making any such loan he shall report the offers and the security proposed to be given to the court or one of the judges thereof for its approval.

HUGH L. BOND,
C't Judge.

And on the 6th day, of August, 1884, the following order was made and entered of record, to wit:

In the Circuit Court of the United States for the District of West Virginia.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

Upon the petition of Wm. P. Thompson & O. H. Payne.

The court having heretofore directed the clerk of this court to loan the sum of ten thousand dollars referred to in the petition upon the best terms that could be had, and report the offers received for the same to this court; and it appearing to the court that R. J. McCandlish, cashier of the First National Bank of Parkersburgh, on behalf of said bank, is the only applicant for said loan, 135 and that the said bank agrees to pay at the rate of four per cent. per annum for said sum of money so long as the same is held by said bank:

It is ordered that L. B. Dellicker, clerk of this court, do loan the said sum of ten thousand dollars to the said First National Bank of Parkersburgh, in such manner and form as he may think best, at the rate of interest named in this order.

J. J. JACKSON,
Dist. Judge.

On the 4th day of Oct., 1884, the following report of sale No. 2 was filed in the clerk's office, to wit:

Report of Sale Made by J. B. Jackson & W. L. Cole, Special Commissioners.

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

To the honorable judges of said court:

The special commissioners who were appointed by the decree made in the above cause on the 17th day of November, 1883, to make sale of the real estate and property in said decree mentioned beg leave to report as follows:

That pursuant to said decree and the order of court made 136 in said cause on the — day of June, 1884, setting aside the sale of said property formerly made to Charles H. Shattuck and directing a resale, they fixed upon the 15th day of September, 1884, at two o'clock p. m., as the time to offer said real estate and property for sale, and they caused notices of the time, terms, and place of sale to be published once in each week for six successive weeks prior to the time of sale so fixed in each of the following newspapers, to wit, the State Journal and the Parkersburg Sentinel, both of which papers are published at Parkersburgh, Wood county, West Virginia; the Ritchie Gazette, which is published at Harrisville, Ritchie county, West Virginia, and the Monroe Commercial, which is published at Monroe, in the State of Michigan; they also had said notice published for four successive weeks prior to the sale so fixed in the New York Tribune, a newspaper published in the city and State of New York; said notice of sale was also posted at the front door of the court-house of the said county of Ritchie for six weeks prior to said day of sale, and hand-bills giving notice of the said sale were posted in many public places in the counties of Wood and Ritchie, and upon and near the property to be sold. Copies of the notice so published and posted, with the certificate of the publishers of said newspapers as to the publication thereof, and a copy of the hand-bills so posted, are herewith filed as part of this report.

On the said 15th day of September, 1884, upon the application 137 of said Charles H. Shattuck, the purchaser of said property at the former sale, and for seasons which your commissioners deemed sufficient, they did not open the bidding on that day, but adjourned the sale until the first day of October, at the same hour and place in the notice mentioned, and gave notice of said adjournment by proclamation made in the presence and hearing of all persons who were present to attend said sale pursuant to the notice aforesaid, and the notice of said adjournment of said sale was published in each of the above-mentioned newspapers, except the New York Tribune.

Pursuant to said notice so given your commissioners, on the first day of October, at two o'clock in the afternoon, offered for sale at public auction, at the Julianna-street entrance of the United States court-house and post office, in the city of Parkersburgh, in said district of West Virginia, the real estate and property in said decree and notice mentioned and described, and J. N. Camden, being the highest bidder for said real estate and property, became the purchaser thereof for the sum of one hundred and seventy-three thousand and fifty dollars ($173,050).

The said Camden did not and has not as yet paid to your commissioners the sum of money so bid and offered by him for said property, as aforesaid, or any part thereof; but when your commissioners required the cash from said Camden, pursuant to the
138 terms of said sale, he tendered to us a paper purporting to be
a copy of a contract in writing made between several of the creditors mentioned in said decree of the 17th of November, 1883, authorizing the said Camden, as the agent or trustee of the said creditors who signed said contract, to purchase the said property at any sale thereof that might be made under said decree and assigning to him the amounts decreed in favor of each of said several creditors for the purpose of his using and applying the same in payment of the sum so bid by him for said property. Said copy of the contract, with the paper thereto attached, signed by Heman Loomis, by B. M. Ambler, his attorney, bearing date September 30th, 1884, is herewith filed. Said Camden also exhibited to your commissioners the original of the said contract from which the copy hereto attached was made. Your commissioners declined to receive the said contract in payment in whole or in part of the purchase-money so bid by said Camden for said property, or to accept anything in payment thereof except lawful and current money of the United States, and this the said Camden has not as yet paid.

The foregoing report is very respectfully submitted for the consideration and action of the court.

J. B. JACKSON,
W. L. COLE,
Commissioners.

The expenses of sale are as follows (see next page):

139	Advertising—New York Tribune	$59	00
	State Journal	37	50
	Parkersburg Sentinel	36	10
	Ritchie Gazette	32	60
	Monroe Commercial	25	50
	Posters	1	40
	Auctioner, A. K. Leonard		
	Commissioners for making sale and disbursing money		

Copy of contract and paper attached, referred to in foregoing report of sale, is in words and figures following, to wit:

Hon. J. N. Camden, Parkersburgh, W. Va.

Dear Sir: In November last a contract was made between you, Heman Loomis, J. H. Carrington, and others, whereby it was agreed that you should purchase, as trustee, the property of the West Virginia Oil and Oil Land Company, which was decreed to be sold by a decree passed on the 17th day of November, 1883, by the U. S. circuit court for the district of West Virginia, in the cause in equity therein pending, in which F. L. B. Mayhew & Co. were complainants and The West Virginia Oil & Oil Land Company and others were defendants. A copy of that contract is hereto annexed for greater certainty as to its terms, and is respect*ively* referred to.

When the property was offered for sale on May 1st, 1884,
140 you did not bid according to that agreement. The property will be sold on October 1st, 1884, and both the letter and the spirit of that contract cover that sale. To avoid the possibility of misunderstanding you will please take notice that Heman Loomis demands and expects of you that you will bid upon the property and buy it in, pursuant to the terms and conditions of that agreement aforesaid, and you are further notified that he will hold you liable for any violation of said agreement.

Very respectfully,
HEMAN LOOMIS,
By B. M. AMBLER,
His Attorney.

September 30th, 1884.

This agreement made this — day of November, 1883, between J. N. Camden, J. H. Carrington, W. H. Beach, A. C. Worth, Toledo National Bank, R. S. Blair, B. B. Valentine, and Heman Loomis:

Whereas on the 17th day of November, 1883, a decree was made by the circuit court of the United States for the district of West Virginia, in a suit in equity therein pending, wherein F. L. B. Mayhew & Co. are plaintiffs and The West Virginia Oil & Oil Land Company and others are defendants, whereby it was ascertained and adjudged that certain large sums decreed in favor of the parties hereto, respectively, are liens upon the property of the defendant company, and that said property be sold in satisfaction thereof—said decree is hereby referred to and made part hereof—the said J. N. Camden being the assignee of W. D. Thompson, mentioned in said decree, and entitled to receive the sum decreed to said Thompson;

141 And whereas the parties hereto desire to protect their several interests and to insure the sum realized at the sale of said property under said decree shall be sufficient to pay the several debts thereby ascertained and established:

Now, therefore, the parties hereto have covenanted and they do hereby covenant and agree to and with each other as follows:

First. That when said property is offered for sale under said decree that the said J. N. Camden shall purchase the same for the mutual benefit of the parties hereto, if it sell for a sum not exceeding the aggregate amount of said claims adjudicated against it, including interest and costs and expenses of sale.

Second. That if said Camden shall become the purchaser of said property at any sale made under said decree, whether for the full aggregate of such claims, costs, and expenses aforesaid or any less sum, then the several parties hereto do severally assign and transfer to the said Camden, in trust, the several amounts decreed in their favor, respect*fully*, by said decree; and the said Camden, as the agent and trustee of all the parties, is authorized to apply the said several debts and amounts in payment of the purchase-money required at such sale, and in any settlement made between the said Camden and the commissioners authorized to make said sale the said Camden is hereby authorized, as such agent and trustee, to execute and deliver to such commissioners all proper receipts 142 and papers that may be necessary for all and any lien, debt, or claim that may be held by the parties hereto, respectively, as fully and effectively as though the parties hereto were present and did such act in person.

Third. And the said J. N. Camden covenants and agrees with the parties hereto, and each of them, that if he shall become the purchaser of the property as aforesaid he will at once execute and place on record, in the county of Ritchie, a declaration of trust declaring that he holds the said property for the use and benefit of the parties hereto for the payment of the debts adjudicated in their favor, respectively, by said decree, to be paid in the order herein particularly set forth; and the said Camden further covenants and agrees that if he shall purchase said property as aforesaid he will hold the same in trust for said parties, and each of them, and will control and manage the same to the best interest and advantage of said parties, and that he will apply the rents, issues, and profits of said property to the payment of said debts monthly, charging nothing for his time, trouble, or services as such trustee but only the actual necessary expense of executing said trust.

Fourth. And each of the other parties hereto do hereby covenant and agree with the said Camden, in consideration of his covenants herein contained, that as soon as the debts due them, respectively, are paid by him as such trustee they will release and quitclaim to 143 him all their right, title, and interest in and to said property; and further, that the payment of each and all of the debts as herein provided shall operate as a full relief and discharge from the parties hereto, and the title to the said property shall, by the operation of said payments, stand vested in J. N. Camden in fee-simple.

Fifth. It is further covenanted and agreed by and between the parties hereto that the rents, issues, and profits of said property, after deducting necessary expenses as aforesaid, shall be paid out and applied by said trustee as follows:

1. The balance, if any, due to J. N. Camden, assignee of W. D. Thompson, shall be fully paid.

2. Then forty per cent. of the proceeds of said property shall be paid to Heman Loomis and sixty per cent. thereof to the said Carrington, Worth, Beach, Toledo National Bank, Blair, and Valentine, according to their rights and priorities, as fixed by the said decree, as between the six parties last named, until they and each of them are fully paid.

3. Then sixty per cent. of said proceeds shall be paid to said Carrington, so far as to reimburse and indemnify him such sums of money, if any, as he may be held liable for as maker, acceptor, or

indorser of two certain bills of exchange, for the payment of which the said West Virginia Oil & Oil Land Company is primarily liable, one of which bills is supposed to be held by Marietta Arnold, 144 of Michigan, and is for the sum of $1,500, and the other is held by the National Bank of Commerce in New York, and is for the sum of $2,431.39.

4. After the payment of the foregoing amounts the said property shall be held in trust for the payment of any balance due said Heman Loomis until the same is fully paid.

Witness the following signatures & seals.

(Signed) J. N. CAMDEN. [SEAL.]
HEMAN LOOMIS, [SEAL.]
By B. M. AMBLER,
Attorney-in-Fact.
(Signed) J. H. CARRINGTON. [SEAL.]
(Signed) A. C. WORTH. [SEAL.]
(Signed) B. B. VALENTINE. [SEAL.]
(Signed) R. S. BLAIR. [SEAL.]

145 On October 6th, 1884, the following order was made and entered of record, to wit:

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others. } In Equity.

On this 6th day of October, 1884, J. N. Camden presented his petition to the court praying that he be allowed to comply with the terms of the sale made on the first instant by complying with the terms of a contract between the holders of the liens upon the property sold, and for other relief.

Upon consideration whereof it is ordered that said petition be filed; and upon motion of Heman Loomis, by counsel, it is further ordered that the matters arising upon the report of sale, filed by J. B. Jackson and W. L. Cole, special commissioners, and upon the said petition of the said Camden be set down to be heard upon the 3d day of November next.

The petition refer-ed to in the foregoing order is in words and figures following, to wit:

"*Petition.*"

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND CO. *et al.*

146 To the honorable judges of said circuit court:

Your petitioner, Johnson N. Camden, respectfully represents that he is the holder of the amount decreed in above cause on the 17th day of November, 1883, in favor of W. D. Thompson.

He further shows that in the month of November, 1883, your petitioner entered into a contract with J. H. Carrington, Heman Loomis & others, in whose favor said decree was passed in the above-styled cause, *in* said November 17th, 1883, by which contract it was agreed that your petitioner should purchase the land and property of the West Virginia Oil and Oil Land Company described in said decree and thereby directed to be sold; that said purchase should be made on behalf of the creditors named in said decree, and that your petitioner was authorized to use and apply the several *claims*, respectively, decreed in their favor in satisfaction of the purchase-money at any sale had under said decree; and it was further provided by said contract that your petitioner, after purchasing said property, should hold it in trust until the amounts named in the decree were paid off in full out of the rents and profits of the property, and that when the parties, respectively, should have thus received the amounts of their several debts then the creditors aforesaid released and quitclaimed all their right, title, and interest in and to the property unto your petitioner.

The said contract is herewith filed and made part hereof, marked "Exhibit Camden A."

147 Your petitioner made that contract in good faith; he entered into it upon the faith of and relying upon the said decree of November, 1883, and he intended to carry it out according to its terms, and such he believes was the purpose of all the parties named therein, and that such contract was made long before your petitioner had any notice that any objection was made as to any part of said decree, and long before any proceedings were taken questioning the validity of said decree.

Shortly before the day on which the said property was offered for sale, sold on October 1st inst., Heman Loomis, one of the parties to said contract, notified your petitioner that Loomis demanded and expected that your petitioner would bid upon the property and buy it in pursuant to the terms and conditions of that contract, and that Loomis would hold your petitioner liable for any violation of said agreement, which notice has been returned with the report of sale made by J. B. Jackson and W. L. Cole, special commissioners.

The sale was made on October 1st, 1884, and your petitioner, as the agent and trustee of the several parties to said contract, bid for the property aforesaid the sum of one hundred and seventy-three thousand and fifty dollars; and your petitioner now tenders and offers himself ready to carry out that contract according to its terms in such manner and form as this honorable court may require or direct.

Your petitioner is advised and believes that he stands in a fiduciary relation to the parties to said contract, and that he may properly invoke the direction and guidance of the court to protect him in the administration of his trust; and he further informs your honors that he is largely interested to have the 148 contract performed and executed, and that he desires that the same may be done.

Your petitioner says further that he is advised the amount due on the day of sale and unpaid, upon the several debts adjudged by said decree, amounted, with interest, to the sum of ---- $199,786 91

And the bid was	173,050 00
Leaving a deficiency of	$26,736 91

Between the amount of the bid and the amount necessary to pay the liens.

The oil in the receiver's hands and other property held by him and applicable to said debts is estimated upon best obtainable information at about $11,000.00 in value, and that $11,000.00 is offset in part by the cost of sale, commissioners' expenses, & costs of suit and other charges against the funds in the hands of the court; and thus it is, as your petitioner shows, that, even if your petitioner were willing to pay the entire amount of said bid of $173,050.00 in cash, the amounts decreed in favor of the holder of the last liens under said decree would not be covered by many thousands of dollars, while under said contract the entire amount of the adjudged indebtedness will eventually be paid in full, and such was the reason for making the contract, as shown by its terms.

Your petitioner says that he — advised that of the several debts
named in said decree there was due upon the amount decreed in
149 favor of Wm. D. Thompson, on October 1st, 1884, after applying all moneys paid by the receiver, about --- $30,100 00

1.	To Heman Loomis, with interest from Nov. 17, '83	39,476 61
2.	" James H. Carrington " " " "	46,934 58
3.	" A. C. Worth " " " "	2,650 08
4.	" W. H. Beach " " " "	2,888 58
5.	The Toledo National Bank, with interest from Nov. 17, '83	9,843 70
	R. S. Blair, with interest from Nov. 17, '83	593 16
6.	R. S. Blair " " " "	593 66
7.	Benj. B. Valentine " " " "	9,056 93
8.	Heman Loomis " " " "	49,111 10

Your petitioner further represents that it was positively and distinctly agreed and understood among all the parties whose names are mentioned in the caption to said contract of November, 1883, to wit, J. N. Camden, J. H. Carrington, W. H. Beach, A. C. Worth, Toledo National Bank, R. S. Blair, B. B. Valentine, and Heman Loomis, that your petitioner should purchase said property under said decree; and your petitioner charges it to be a fact that each of said parties did, in person or by their representatives, assent to that contract and its terms. The paper, the original whereof is herewith exhibited, he is advised is in the handwriting of Mr. W. L. Cole,
150 attorney & solicitor of record for all of said parties named in
said decree except W. D. Thompson & Heman Loomis; and it was represented and stated by J. H. Carrington & by said Cole that Carrington was authorized to act for said bank and that Mr.

Cole could speak for W. H. Beach, and that the said contract might be considered complete as to all the parties.

Your petitioner now discovers that the paper was not actually signed by W. H. Beach or by said bank. He believes and charges that both are bound by said agreement, though they did not sign the same, but to avoid any vexatious litigation your petitioner is willing to pay, if required by the court, the full amount of the claims of said Beach and of said bank in cash.

Your petitioner prays that, the premises being considered, he may be allowed to apply the claims and debts adjudged by said decree in discharge of his liability for the purchase-money; that his compliance with the terms of said contract may be considered and decreed a compliance with the terms of said sale; that the said contract may be received in discharge of his bid; that the sale be confirmed, and that a deed be made to your petitioner for the said property, and that the court will make such further order or decree and grant such other and general & further relief in the premises as your honors may deem right, as in equity may be proper; and as in duty bound, &c., he will ever pray, &c.

J. N. CAMDEN.

CALEB BOGGESS,
Clarksburgh, W. Va., Solicitor.

151, 152 STATE OF WEST VIRGINIA, *County of Wood,* } *To wit:*

This day personally appeared before the undersigned authority of said county J. N. Camden, who, being duly sworn, upon his oath says that he has read the foregoing petition and signed his name thereto as petitioner, and that the matters in said petition, so far as stated upon knowledge, are true, and so far as stated upon information he believes them to be true.

J. N. CAMDEN.

Sworn and subscribed before me this 6th day of October, 1884.
Witness my hand and official seal.

[SEAL.] LUCIUS A. COLE,
Notary Public.

153 On the 27th day of October, 1884, the following petition was filed in the clerk's office of said court:

Petition.

In the Circuit Court of the United States for the District of West Virginia, in the Circuit Court thereof. In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY and Others.

To the honorable judges of said court:

The petition of Heman Loomis respectfully shows to the court that he is the person in whose favor two several sums of money were decreed by and under a certain decree passed and entered in the above cause on the 17th day of November, 1883, and the same person who caused to be served on J. N. Camden the notice dated September 30th, 1884, signed by said Heman Loomis, by counsel, which notice is now filed in the above cause and made part of the report of sale by Messrs. J. B. Jackson and W. L. Cole, special commissioners, and your petitioner is the Heman Loomis mentioned in the petition filed in this cause by said Camden, wherein and whereby the said Camden prays that the sale made by said commissioners may be confirmed unto him (the said Camden) as the agent and trustee of the parties to the contract which is made part of said Camden's petition.

Your petitioner respectfully represents that your petitioner
154 is vitally interested in having that contract carried out and
the sale confirmed, as prayed for by said Camden; that your petitioner relied upon it to protect his rights and interests and to insure realizing the full fruits of the decree in his favor, and that unless he can get the benefit of said contract he believes that he will be ruinously prejudiced and his interests sacrificed, and he refers to said petition of said Camden as part hereof.

Your petitioner has been informed that one J. H. Carrington and all the parties to said contract, except said Camden and your petitioner, object to being bound or held by the terms thereof, and that they are unwilling that the assignment made by them unto said Camden of the several liens owned by them should be applied as purchase-money to the extent of their several interests; and your petitioner is further informed and believes that the parties to said contract, other than himself and said Camden, desire to repudiate the said agreement and to leave your petitioner remediless as to any benefit thereunder.

Your petitioner further shows that im-ediat-ly before that contract was entered into he had a suit pending in the United States circuit court for the southern district of Michigan, at Detroit, in which your petitioner was plaintiff and the said J. H. Carrington was defendant, involving over twenty thousand dollars, in which suit your petitioner had attached property of said Carrington upon proceedings brought upon a judgment obtained in New York, and
there was also a suit pending in Michigan, to which R. A.
155 Storrs (named in said decree of November 17th, 1883), was a
party. All of the persons named in said decree, except W. D. Thompson and Heman Loomis, were represented by Messrs. W. L. Cole and C. C. Cole, counsel of record in the above-entitled cause.

When the parties to said contract were in treaty and were consulting as to the terms upon which an agreement could be reached it was stated by the representative of J. H. Carrington and others that said Carrington and the parties in interest other than Heman Loomis would not become parties to the arrangement shown by said contract unless and until*l* the said Heman Loomis should cause the dismissal of all litigation pending in Michigan above mentioned, being two suits, in one of which R. A. Storrs was a party and in the other of which said Carrington was a party; and unless and until, further, the said Loomis should transfer and assign to the said R. A. Storrs the sum of $5,340, to be paid to Storrs out of the first moneys enuring to Loomis under said decree, and Storrs to transfer to Loomis some worthless securities which it was insisted should be taken by Loomis. It was well known at the time that such securities were worthless, and, in fact, Loomis objected to taking them. They were not worth the half of $5,340, but were agreed to be accepted as part of the general compromise.

Your petitioner further shows that said Carrington and others did
force your petitioners to make this arrangement as the condi-
156 tion of their becoming parties to the said contract. Your
petitioner thought and protested then that he considered the terms rather too exacting, but he was extremely anxious to avoid the possibility of being sacrificed in realizing all he was entitled to, and it was finally agreed, upon the demand of the said J. H. Carrington and of his counsel, between the parties that your petitioner should assign the amount of $5,340.00 to Storrs, and that your petitioner should further procure the dismissal of said suits.

Your petitioner says further that the agreement to dismiss the suits and to pay the $5,340 by way of assignment to Storrs was contemporaneous with and a part of the contract referred to and exhibited with the petition of said Camden, but that for convenience sake the contract was put in a separate paper from the assignment to Storrs, and your petitioner does not now recollect and cannot state whether the agreement for the dismissal of said suits was in writing or not; but he charges the fact to be that he understood, and the fact was, that the agreement to dismiss the suits, the assignment of the $5,340, and the contract to purchase were interdependent parts of the same transaction; and he says further that the said assignment of the $5,340 was reduced to writing and delivered to Mr. W. L. Cole, of counsel for Storrs & Carrington. The contract for the purchase of the property was reduced to writing also, as shown by the papers herein; the two suits were dismissed, as agreed, the contract of purchase was signed by your petitioner by B. M. Ambler,
his attorney-in-fact, and everything was done which had been
157 undertaken to be done by your petitioner, and he well and
truly believed & faithfully assured that he was safely and am-ly protected under said contract.

Your petitioner had not only the rights arising upon the mutual contract of the parties to that contract, but he had procured the settlement of litigation; he had entirely altered his position with reference to the parties, relying upon an agreement with them, and he had transferred $5,340 of a decree in his favor as part consideration for having the matter consummated, and it was insisted by Carrington that Carrington and the debts he controlled would not become parties to the contract unless such assignment was made to Storrs.

Your petitioner had no doubt whatever of the validity of that contract when it was made, nor did he have the least intimation or notice that any of the parties thereto were at all disposed to recede from or object to any of its provisions until some time in the spring of 1884, when J. H. Carrington & others notified your petitioner that they would not abide by that contract by reason of attacks that had been made upon the rights of Heman Loomis under said decree, all of the facts and circumstances connected with which are set forth in a petition filed by your petitioner praying to set aside the sale made on the 1st day of May, 1884, and to which reference is now made as part hereof.

Your petitioner further shows that while the said other parties repudiate their obligations under the contract of purchase they refuse to cancel the said assignment or to deliver the same to him or to reinstate him to the position he occupied before the said
158 assignment was made, and so it is that the said other parties, except Mr. Camden, now insist that your petitioner shall lose over $20,000 by deficiency in purchase-money, that he shall lose the $5,340 assigned as aforesaid, and that he shall be deprived of all advantages sought by him in the litigation pending in Michigan.

And your petitioner submits that it is unjust and wrong or fraudulent that these parties should be allowed to enjoy such benefits as they claim the right to retain and to be relieved of the burdens, if any there be, of their contract. Nothing has occurred since the day that contract was made to alter the position of one single party with regard thereto, and the money assigned, to wit, the $5,340, has been in no part paid to any one, but the paper of assignment and the rights arising thereunder belong to the said R. A. Storrs or to some other party to the original transaction, having full notice of all the circumstances, and your petitioner is advised that if, by any possibility, that assignment has passed into such hands that he is in any way estopped to make defense against it, then, as to that $5,340, the contract must be enforced as the consideration has fully passed.

Your petitioner is remediless to obtain redress at law, and is advised that it is competent and proper to have the rights of all of the parties under that contract adjudicated and settled in this suit.

Wherefore your petitioner prays that, the premises being considered, your honors will decree that the sale to said J. N. Cam-
159 den, trustee, may be confirmed and held valid; that the several claims and liens named in said contract and tendered by said Camden may be accepted by the court in full satisfaction of the purchase-money required at the sale, and the court will construe the said contract authorizing said Camden to purchase the property as trustee, and that the court will ascertain the rights of the respective parties thereunder; that the court will decree that the assignment aforesaid of the $5,340 made by your petitioner was a part of and dependent upon said contract of purchase, and that the said assignment must be canceled unless the contract is carried out; that the court will do full and complete justice between the parties in interest.

And your petitioner further prays that your honors will cause such process issued as may be deemed necessary in the premises, and that the court will grant such other, general, and further relief in the premises as in equity may be deemed just and as the nature of the case may require; and as in duty bound, &c., he will ever pray, &c.

HEMAN LOOMIS,
Petitioner, by Counsel.

B. M. AMBLER,
Counsel for Petitioner.

STATE OF MICHIGAN
County of Lenawee, } *To wit:*

This day personally appeared before the undersigned authority of said county Heman Loomis, the above-named petitioner, who, being duly sworn, upon his oath says that he has read the foregoing petition and knows the contents thereof, and that the facts and allegations therein contained so far as stated upon his knowledge are true, and so far as stated upon information he believes the same to be true.

HEMAN LOOMIS.

Sworn and subscribed to before me in my —, county aforesaid, this 18th day of October, 1884.

Witness my hand and official seal.

[NOTARIAL SEAL.] CHARLES B. BOTHUM,
Notary Public in and for Lenawee County, Michigan.

160 And on the 27th day of October, 1884, the following "notice" was filed in the clerk's office, to wit:

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND CO. & Others. } In Equity.

To J. H. Carrington, Toledo National Bank, and all of the parties in whose favor a decree was passed in above cause on November 17th, 1883, except Heman Loomis and W. D. Thompson.

GENTLEMEN: You will please take notice that I have filed a petition in above cause praying a confirmation of the sale made on the 1st day of October, 1884, of the property of the West Virginia Oil & Oil Land Company to J. N. Camden, as trustee and agent for the holders of liens adjudged by said decree, and praying further relief.

Yours truly, HEMAN LOOMIS,
By Counsel.

B. M. AMBLER,
Solicitor for Heman Loomis.

161 And on the 14th day of October, 1884, the following order was made and entered of record, to wit:

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.
} In Equity.

This day came James H. Carrington, A. C. Worth, William H. Beach, Rob't S. Blair, the Toledo National Bank, and Benjamin B. Valentine, by C. C. Cole, their attorney, and filed their exceptions to the report of sale made by J. B. Jackson and W. L. Cole, commissioners appointed by a decree of this court entered on the 17th day of November, 1883, to make sale of the real estate and property in said decree mentioned, which report of sale was filed in this cause on the 4th instant.

And it appearing to the court from said report that at the sale of said property, on the 1st day of October, 1884, held pursuant to said decree, J. N. Camden became the purchaser of said real estate and property for the sum of one hundred and seventy-three thousand and fifty dollars, and that he has failed to comply with the terms of sale by paying said sum of money, or any part thereof, to said commissioners or into the registry of the court.

Thereupon, on motion of the defendants, Carrington, Beach, Blair, Toledo National Bank, and Valentine, a rule is awarded against the said J. N. Camden, returnable on the 3d day of November, 1884, to show cause, if any he can, why he should not pay to said
162 commissioners or into the registry of this court said sum of
$173,050.00 so bid by him for said property as aforesaid, or why said sale so reported by said commissioners should not be set aside and said real estate and property resold by said commissioners at the risk and costs of said Camden.

And on the 14th day of October, 1884, the following exceptions to report of sale were filed in the clerk's office, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

The defendants, James H. Carrington, A. C. Worth, W. H. Beach, R. S. Blair, the Toledo National Bank, and Benjamin B. Valentine, by C. C. Cole, their counsel, except to the report of J. B. Jackson and W. L. Cole, commissioners appointed to make sale of the real estate and property mentioned in the decree in this cause made on the 17th day of November, 1883, which report was filed in this cause on the 4th day of October, 1884, and for cause of exception they say that said report is erroneous and insufficient, because it shows upon
163, 164 its *force* that said commissioners have failed to execute
the power vested in them by said decree; that they have failed to make sale of said real estate & property, as directed by said decree of November 17th, 1884; that if the said J. N. Camden bid

off said real estate and property for the sum of $173,050 at the sale held on the 1st day of October, 1884, and failed or refused to pay the sum so bid by him in cash, said commissioners should have proceeded at once to sell said property, for cash, to the highest and best bidder who would comply with the terms of sale.

The defendants therefore except to said report of said commissioners, and pray that said report may be recommitted to said commissioners with direction that unless the said Camden do at once comply with the terms of sale by paying to said commissioners said sum of $173,050 that said real estate and property may be resold by them at the risk and cost of said Camden.

JAMES H. CARRINGTON,
A. C. WORTH,
W. H. BEACH,
TOLEDO NATIONAL BANK,
BENJAMIN B. VALENTINE,
R. S. BLAIR,
By C. C. COLE, *Their Attorney.*

165 On the 3d day of November, 1884, the following answer was filed in the clerk's office, to wit:

The Joint and Separate Answer of Robert S. Blair and William H. Beach to a Petition Filed in said Cause by J. N. Camden.

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. Mayhew & Co.
vs.
The West Virginia Oil & Oil Land Company & Others.

To the honorable judges of said court in equity sitting:

These respondents, for answer to said petition, say that they believe it to be true, as alleged in said petition, that the agreement, a copy of which is filed with said petition, was signed by the parties whose names appear thereto, but they deny that said agreement ever became operative or binding upon any of the parties thereto, because the same was not executed by all the parties thereto, as said agreement shows upon its face it must be before it could be binding — or to any party. Respondent Blair admits signing said agreement, but only upon condition that all the other parties thereto should sign it also, and said contract not having been signed by all of the parties mentioned therein it never became — contract, and is not binding on respondent Blair or any other party thereto. 166 It is true that an arrangement was in contemplation between the parties mentioned in the caption of said contract by which at the sale of said property, if it should sell for less than enough to pay all the debts adjudicated by the decree therein mentioned, that said Camden should purchase said property under and pursuant to the terms of said contract; and it is true that the said contract was written by W. L. Cole, one of the attorneys for respondents, but said arrange-

ment was never consummated and said contract never completed. And respondent Beach, on information and belief, denies that said W. L. Cole represented to said Camden, or either of the other parties to said contract, that he was authorized to speak for respondent Beach, or that said Cole was in any way authorized to assent or agree to the terms of said contract or any contract for said respondent Beach; but he answers upon his own knowledge that the said Cole had no such right, power, or authority from this respondent. Respondent Beach did, in person, examine a copy of said contract shortly prior to the sale made May 1st, 1884, and assented to the terms thereof, provided all the other parties should execute the contract, but after the sale of the said property made on the 1st day of May, 1884, said sale having been made before said contract was executed by all the parties thereto, and when all idea of completing said contract had been abandoned, respondent withdrew from the
hands of his said attorney the paper by which he had assented
167 to become a party to said contract, and for a valuable consid-
eration sold, assigned, and transferred his said claim against said Oil Company, and does not now own or control the same, and did not own or control it on the 1st day of October, 1884, when the property was sold and purchased by said Camden.

These respondents deny that the said Camden, at the sale of said property, on the 1st day of October, 1884, purchased the same as agent or trustee for these respondents under said contract, but they say that, on the contrary, when the property was offered for sale on the 1st day of May, 1884, the said Camden declined to purchase under said contract, and he never at any time afterwards notified respondents or any party named in said contract, as they are informed and believe, that he could or would act under said contract, and his claim to have done so, after the said sale was made to him, was a great surprise to these respondents.

These respondents further answer that since the making of said decree of November 17th, 1883, directing said sale, and after said contract was signed by the several parties whose names appear thereto, a suit was instituted in your honors' court by stockholders and certain creditors of said oil company, which suit is still pending and undetermined, by which the right of the said Heman Loomis to have any part of the two sums adjudged in his favor by said de-
cree is in controversy, so that he is unable to perform the said
168 contract on his part, and for this reason, also, the prayer of
said petition should be denied.

Respondents do not know, and can neither admit or deny, whether the statements and allegations as to the amounts of the company's debts and the value of the property in the hands of the receiver —.

Having fully answered said petition, these respondents ask that the prayer thereof may be denied; that said Camden may be required to pay cash for said property, and, if he fails to do so in such time as the court may require, that said property be resold at the risk and cost of said Camden.

R. S. BLAIR.
W. H. BEACH.

C. C. COLE, *Counsel for Respondents.*

STATE OF WEST VIRGINIA, } *To wit:*
Ritchie County, }

Robert S. Blair, being duly sworn, says upon oath that he is one of the respondents named in the foregoing answer; that he has read the same and knows the contents thereof, and that the matters therein set forth upon his own knowledge are true, and those therein stated upon information he believes to be true.

R. S. BLAIR.

Subscribed and sworn to before me in my —, said county of Ritchie, this 27th day of October, 1884.

G. W. AMOS,
Notary Public for Ritchie Co., W. Va.

169 STATE OF MICHIGAN, } *ss:*
County of Monroe, }

Wm. H. Beach, being duly sworn, upon oath says that he is one of the respondents named in the foregoing answer; that he has read the same and knows the contents thereof, and that the matters therein stated are of his own knowledge true, except as to those matters stated upon information and belief, and as those matters he verily believes them to be true.

W. H. BEACH.

Subscribed and sworn to before me, in said county of Monroe, this 29th day of October, 1884.

H. A. LOCKWOOD,
Notary Public in and for Monroe County, Michigan.

STATE OF MICHIGAN, } *ss:*
County of Monroe, }

I, P. H. Mathews, clerk of said county of Monroe and of the circuit court therein, being a court of record, do hereby certify that H. A. Lockwood, whose name is subscribed to the annexed affidavit and therein written, was, at the time of taking such affidavit, a notary public in and for said county, duly commissioned and qualified, and duly authorized by law to take the same; and further, that I am well acquainted with his handwriting and verily believe that the signature thereto is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at the city of Monroe, this 28th day of October, 1884, A. D.

[SEAL.] P. H. MATHEWS, *Clerk.*

170 And on the third day of November, 1884, the following answer to the answer of J. N. Camden was filed in the clerk's office, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

The joint and separate answer of James H. Carrington, A. C. Worth, and B. B. Valentine to a petition filed in said cause by J. N. Camden.

To the honorable the judge of said court, in equity sitting:

These respondents, for answer to said petition, say that they admit the signing of the paper-writing filed with said petition called a contract, but they deny that the same is a contract between them and the said Camden or that it ever became operative and binding upon any of the parties thereto. They say that it was the understanding that all of the parties mentioned in the caption of said contract should assent to it, sign it, and become bound by it, and that inasmuch as the Toledo National Bank of Toledo, Ohio, and William H. Beach have not signed it nor assented to it, that it never became binding upon the other parties thereto.

171 These respondents are not prepared to charge that the said petitioner did not enter into said negotiations in good faith, but they do say that he declined to perform his part of the undertaking in said alleged contract, as is hereinafter more fully set forth.

It is true, as stated in said petition, that it was in contemplation of these respondents, and they presume it was in contemplation of the other parties who signed said alleged contract, that said Camden should purchase said property under said decree in event of the contingency happening which is mentioned in said contract, to wit, that it should sell for less than enough to pay the entire debts adjudicated by the decree, but upon information and belief they deny that each of the parties mentioned in said decree did in person or by their representatives assent to that contract and its terms.

They believe it to be true that the original contract is in the handwriting of W. L. Cole, one of the attorneys for these respondents, but the said J. H. Carrington upon his own knowledge, and the other respondents upon information and belief, deny that the said Carrington or the said Cole represented that Carrington was authorized to act for said bank, or that the said Cole could speak for Beach, and that the said contract might be considered completed as to all the parties. The respondent Carrington for himself says that he was and is responsible to the said bank for the amount of their debt as surety for the said oil company, and that he believed that the said bank would assent to any reasonable arrangement that he might make to secure the payment of that judgment, and he so
172 represented to the said Camden, but at the same time he assured the said Camden that he had no authority to bind the bank in that regard. But this respondent answers that he still believes that the said bank would have been willing to sign, assent

to, and comply with the said agreement, provided the other parties thereto had done so, and the *the* said Camden and the said Loomis had been willing to and had performed and executed it or their part, which they failed to do, as hereinafter more fully set forth. They object to the said contract now as wholly void, if for no other reason, because it is unsigned by the said bank and said Beach and not binding upon them, and they object to the confirmation of said sale upon the basis of said contract, even though the said Camden would pay, as he offers in his petition, sufficient money to pay the debt of the said bank and the said Beach, as that would be inequitable and unjust to the said Carrington, inasmuch as his judgment is prior those of the said bank and of the said Beach and entitled to prior satisfaction.

Respondents, for further answer to said petition, say that, after they had signed the said alleged contract, a petition was filed by stockholders and other creditors in the above-mentioned cause, and the claim of the said Loomis allowed him in said decree was assailed, and the court thereupon rendered an opinion in writing, in which it was stated that an order would be entered in said cause requir-
173 ing so much money as the sale of said property might realize applicable to the claim of said Loomis would be required to be paid into court. This was some time prior to the first offer by the commissioners to sell said property. These respondents thereupon caused inquiry to be made by their counsel of the said Camden as to his views in relation to the alleged contract and whether under such circumstances it could be carried out if executed by the other parties, and whether he proposed to bid for the property at the then approaching sale under the terms of that contract if completed. The said Camden refused to give any positive assurance that he would bid or expected to bid under the terms of said contract, but intimated that he still thought it could be done. Matters remained in this condition until on the day that the property was first offered for sale by the commissioners and until after the commissioners had commenced to cry the sale. These respondents, not knowing whether the said Camden expected to bid for the property under the terms of said alleged contract, and deeming the same not binding upon him or them unless he chose to so regard it, *they* made other arrangements whereby the said Carrington was enabled to bid the property to $162,000, which was sufficient to cover the debts due these respondents; but before the said Carrington bid at all upon the property he caused his counsel to inform the said Camden that if he would bid the property in under the terms of the alleged contract he, the said Carrington, would not bid at all, but if
174 he did not propose to so bid it, he, the said Carrington, would bid for his own protection and that of the other respondents; and Respondent Carrington's counsel received the reply from said Camden that he should not bid under the contract, and that they could make such arrangements as they thought best for their own protection. Thereupon the said Carrington, at the first sale of said property, made on the — day of ——, 1884, bid the said property to $162,000; whereupon C. H. Shattuck bid $163,000, and it was knocked

down to him at that price. These respondents, for further answer, say that the said Camden was present at said first sale and declined to bid under said alleged contract, and that he has declared to the respondent Carrington since the last sale of said property that he did not bid at all for said property.

Respondents, for further answer to said petition, call the attention of the court to the first covenant or stipulation in the said alleged contract, which is in these words: "First, that when said property is offered for sale under said decree that the said J. N. Camden shall purchase the same for the mutual benefit of the parties hereto, if it sell for a sum not exceeding the aggregate amount of said claims adjudicated against it, including interest and costs and the expense of sale." They allege and charge that, even if the said alleged contract had been consummated so as to make it mutually binding
175 upon the parties, still, as they are informed and believe,
the failure and refusal of the said Camden to keep and perform the stipulation and covenant in said contract contained on his part absolved these respondents and all other parties to said alleged contract from any supposed obligation upon them existing thereby.

These respondents state, as will be seen by said alleged contract, that the only object and incentive which they had for entering the proposed arrangement was to secure a sale of said property which would be sufficient to pay their debts; they had no other interest or incentive for signing said paper-writing, as will appear upon the face thereof. When they found that it would probably be impossible for the said Loomis to comply with the said alleged contract on his part, and that the said Camden declined to assure them that he would bid the property off under the terms of that paper, they were compelled for their own protection to enter into other arrangements by which they could secure said property to be bid up to a price which would pay their debts, and in doing this the respondents Worth and Valentine have made other arrangements with their debts and assigned them to other parties, and could not now comply with the terms of said paper-writing if it were adjudicated to be valid and binding upon them, and they submit to the court that it would be highly inequitable and unjust for the said Camden, after declining to purchase said property under the terms of said paper-writing, to now claim the right to do so after these respondents
176 have arranged to have the property bid high enough to cover
their debts and that of all others, except a portion of that going to the said Loomis, who was and still is, as they are informed and believe, unable to comply with the stipulations in said paper-writing contained on his part to be kept and performed.

Respondents, for further answer, say that they are informed that the said sale to the said Camden cannot and ought not to be confirmed upon the basis of said contract because the terms of said decree require the purchase-money to be paid in cash, and that this must be done unless the court shall modify the decree so as to permit it to be paid otherwise, and they are advised and believe and so answer that the court has no power or jurisdiction to do this unless it should be by the consent of all persons upon the record and all persons interested in the distribution of the proceeds of said sale.

For further answer to said petition and objection to the prayer thereof, these respondents say that they are informed and believe that when the question of the confirmation of the first sale of said property was before the court the court declined to confirm the sale solely upon the ground of the upset bid that was then offered, which was offered to be paid in cash, and that the offer was made by the friends and associates of the said Camden who desired to secure said property.

These respondents, for further answer to said petition, say
177 that they are informed and believe that at the time of the
signing by the said Loomis of said alleged contract he was not the owner of the whole of the claim decreed to him in said decree, even if he was any part thereof, but that prior to that time he had assigned to one Richard A. Storrs the sum of five thousand three hundred and forty (5,340) dollars of said claim, and that the said Loomis could not at the time, nor can he now, comply with the terms of said alleged contract on his part; and they are further informed and believe, and so state to the court, that the whole of the claim of the said Loomis is in controversy in this honorable court, and that it cannot be used in the manner specified in said alleged contract for the purpose of paying any part of the purchase-money of said property.

Respondents further show to the court that since the passing of said decree and signing of said paper-writing by them other creditors, claiming debts against said property prior to some of the claims adjudicated by said decree, have filed petitions in this cause, asserting and setting up said claims, and that for that reason also the purchase-money of said property should be required to be paid into court.

These respondents have no knowledge, except what is contained in said petition, of the service of the alleged notice by said Loomis upon the said Camden.

These respondents deny the allegation of said petition that at the sale of said property had on the first day of October, 1884, that the said Camden, as the agent and trustee of the several parties to said
alleged contract, bid the property off. They answer it is true
178 that he bid the sum mentioned, and that it was knocked
down to him, but he did not profess at the time to bid as agent of these respondents or anybody else, nor did he by any means, direct or indirect, intimate to these respondents, or any one for them, that his bid was as agent or trustee of said parties, and they had no reason to believe that said Camden was bidding otherwise than for himself, and they are informed and believe that he must be so considered and treated by the court. These respondents deny that the said Camden stands in a fiduciary relation towards them, and object to his being considered as having purchased said property in their behalf under the terms of said paper-writing or otherwise.

Respondents do not know whether the amounts of the company's debts stated in said petition and the value of the property in the hands of the receiver is accurately stated or not, and they neither admit or deny the same.

And, having fully answered said petition, they ask that the prayer thereof may be denied, and that the said Camden may be required to pay cash for said property, and if he fails to do so within such time as the court may direct, that the said property may be resold at his cost and risk.

JAS. H. CARRINGTON.
A. C. WORTH.
B. B. VALENTINE.

179 C. C. COLE,
Counsel for Respondents.

STATE OF NEW YORK,
County of New York, } *To wit:*

James H. Carrington, A. C. Worth, and B. B. Valentine, being duly sworn, say upon oath that they are the respondents mentioned in the foregoing answer; that they have read the same and know the contents thereof, and that the matters therein set forth upon their own knowledge are true, and those therein stated upon information they believe to be true.

JAS. H. CARRINGTON.
A. C. WORTH.
B. B. VALENTINE.

Subscribed and sworn to before me this 21st day of October, 1884.

M. B. GINTEL,
Notary Public, New York County.

STATE OF NEW YORK,
County of New York, } *To wit:*

James H. Carrington, being duly sworn, says upon oath that he is one of the respondents mentioned in the foregoing petition, and that he is one of the parties to the suit mentioned in the caption to the foregoing answer; that, after the signing of the said paper-writing mentioned in the petition of said Camden as a contract, he was informed of the filing of petitions attacking the claim of said Loomis, and thereupon requested his counsel to inquire of the said Camden whether he would complete said alleged contract and bid the 180 property under it, and received information from his said counsel that the said Camden declined to state positively, but intimated that he thought the contract could be consummated and the property purchased under it notwithstanding the assailing of Loomis' claim. This was some weeks prior to the first sale of the property.

This respondent, not desiring to rely upon the proposed arrangement to make the property bring his debt, entered into other arrangements conditionally to bid the property to cover his own debt and that of the bank, for which he was and is responsible as surety for the oil company, and went to Parkersburgh a day or so before the first sale of the property to do either, as circumstances might dictate. Although he made several endeavors to ascertain from the said Camden what his expectation and determination was in relation to purchasing the property under the alleged contract he was unable to get any satisfactory response from him until after the commissioners had commenced crying the property; whereupon he sent said Camden word by his counsel that, if he would purchase the property under said proposed arrangement this affiant would not bid at all, otherwise he would bid to protect himself, and received word from the said Camden, through his counsel, that he, the said Camden, declined to purchase or bid for the property under said proposed arrangement, and that he, said affiant, could take such course as he thought best to protect his own interest; thereupon affiant 181 bid the property to $162,000, that being his last bid, and C. H. Shattuck bid $163,000, and it was knocked down to him. Affiant further says that in a conversation between him and the said Camden since the last sale of the property, on the 1st day of October, 1884, the said Camden stated to this affiant that he stood by during the whole time of the crying of the first sale of the property and made no bid therefor whatever.

JAS. H. CARRINGTON.

Subscribed and sworn to before me this 21st day of October, 1884.

M. B. GINTEL,
Notary Public, New York County.

STATE OF NEW YORK,
City and County of New York, } *ss:*

I, Patrick Keenan, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that M. B. Field, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State and for general purposes, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 21st day of October, 1884.

[SEAL.] PATRICK KEENAN, *Clerk.*

182 And on the same day, to wit, November 3d, 1884, the following answer was filed, to wit:

The Answer of the Toledo National Bank to a Petition Filed in said Cause by J. N. Camden.

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & COMPANY
vs.
THE WEST VIRGINIA OIL AND OIL LAND COMPANY *et al.*

To the honorable judges of said court:

This respondent, for answer to said petition, says it does not know whether it is true or not, as alleged in said petition, that the contract, a copy of which is exhibited with said petition, was signed by the parties whose names are thereto attached, and it can neither admit -or deny the same.

Respondent was informed that the creditors of said oil company mentioned in the decree made in said cause on the 17th day of November, 1883, had under consideration the making of some such arrangement as is contained in said contract, and respondent was asked to join therein; and on the 1st day of May, 1884, the day on which said property was first sold, Mr. Young, the president of respondent, went to Parkersburgh, West Virginia, to attend said sale, having authority to represent respondent and to execute such contract for it, if he thought best so to do; but respondent never
183 did by its own act, or by the act of any person or persons
authorized thereto, execute or in any way assent to said contract or the terms thereof.

Respondent was informed, through its said president, that by reason of some suit or proceeding brought by stockholders and certain creditors of said company, not named in said decree, which was then pending in this honorable court, involving the right of said Heman Loomis to the money decreed in his favor by said decree, a doubt existed whether said contract, if signed by all the parties, could be used for the purpose for which it was intended; and before respondent had determined as to the propriety of said contract it was informed that the said Camden declined to act under it, and the sale took place on said 1st day of May, 1884, independent of and without regard to said contract. Said property was purchased at said sale by Charles H. Shattuck for the sum of $163,000, a sum sufficient to pay respondent's claim against said company and all the claims prior thereto, and respondent has had no further knowledge or information in relation to said proposed contract until the said Camden filed his said petition in this cause.

Respondent, upon information and belief, denies the allegation of said petition that said James H. Carrington represented to said petitioner, or any other person, that he was authorized to represent respondent or to act for it in said suit, or in making or consenting to said contract.

Respondent says that said Carrington did not have any such right or authority, nor did any other person, except the president of respondent, as hereinbefore stated.

184 Respondent denies that said petitioner is agent or trustee for it in the purchase of said property, or that he has any right or authority to represent respondent or to use the sum decreed to respondent in said suit in purchasing said property.

Respondent does not know whether the debts of said oil company stated in said petition and the value of the property in the hands of the receiver is accurately stated or not, and it neither admits or denies the same.

Having fully answered said petition, respondent asks that the prayer thereof may be denied, and unless the said Camden pays cash for said property, as required by the terms of said decree, that said property may be resold at his own risk and cost.

TOLEDO NATIONAL BANK,
By SAM'L M. YOUNG, *President.*

C. C. COLE,
Att'y for Respondent.

STATE OF OHIO,
County of Lucas, } *ss:*

Sam'l M. Young, being duly sworn, says he is the president of the Toledo National Bank of Toledo, Ohio, the above-answering defendant, and that the matters and things which are set forth in the foregoing answer of said defendant as from information and belief of others he believes them to be true, and that all the several other matters and things therein set forth are true in substance and in fact.

SAM'L M. YOUNG.

Sworn to before me and subscribed in my presence this 25th day of October, A. D. 1884.

ALMAN HALL,
United States Circuit Court Com'r, Northern District of Ohio.

185 *The Answer of Richard A. Storrs to the Petition of J. N. Camden, Filed in said Cause.*

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW AND COMPANY
vs.
THE WEST VIRGINIA OIL AND OIL LAND COMPANY and Others.

This respondent, for answer to said petition and objection to the prayer thereof, says that on the 23d day of November, 1883, the said Heman Loomis, mentioned in said cause, and to whom a large sum of money was decreed by the decree passed therein on the 17th day of November, 1883, for a valuable consideration by respondent paid to the said Loomis, he, the said Loomis, assigned to this respondent the sum of five thousand three hundred and forty (5,340) dollars of said claim, decreed to the said Loomis as aforesaid, and this respondent has held and still holds the assignment thereof, and is the owner of said sum provided for in said decree to be paid for out of the first moneys that may be realized by the said Loomis out of the sale, and of this assignment the said Camden, as he is informed and believes, had notice at and about the time thereof.

Soon after this assignment from said Loomis to this respondent he was informed that the said Loomis was about to enter into 186 a contract with said Camden and other creditors under that decree, providing for a purchase by Camden of the said property, at the sale thereof, for the benefit of the creditors, unless at the sale the property should sell for more than sufficient to pay all the debts, and this respondent was requested to sign and enter into an arrangement of that character, which he declined to do, but prepared and forwarded to his counsel, at Parkersburgh, an assignment of his interest in said decree to the said Camden, to be held by said counsel in escrow until such time as the arrangement should be completed and the said Camden should purchase the property and need the assignment for the purpose of paying the purchase-money, when his counsel was authorized to deliver it under such terms and conditions as he thought proper and necessary for the full protection of respondent.

Afterwards respondent was informed and believes that the parties provided for in said decree failed to consummate the arrangement to have the property purchased for their benefit for various reasons, and at the first sale thereof the said Camden declined to purchase the property or bid for it upon the basis of *of* such proposed arrangement, and that he and the said Loomis wholly abandoned the same.

And respondent is advised and believes that, under the circumstances, the said contract or proposed arrangement is in no way binding upon him, and he objects thereto and objects to the sale being confirmed to the said Camden upon the basis of said proposed arrangement, as set forth in said petition, unless the said Camden shall pay in cash the purchase-money for said property in accordance with his bid and the terms of said decree.

RICHARD A. STORRS.

187 STATE OF NEW YORK, *County of New York,* } *To wit:*

Richard A. Storrs, being duly sworn, says upon oath that he is the respondent mentioned in the foregoing answer; that he has read the same and knows the contents thereof, and that the matters therein set forth so far as stated upon his own knowledge are true, and those therein stated upon information he believes to be true.

RICHARD A. STORRS.

Sworn to before me this day, 20th Oct., '84.

[SEAL.]

JAMES BRICE,
Notary Public.

STATE OF NEW YORK,
City and County of New York, } *ss:*

I, Patrick Keenan, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that James Brice, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State, and for general purposes, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of said court and county the 20th day of October, 1884.

[SEAL.] PATRICK KEENAN, *Clerk.*

188 On the 3d day of November, 1884, the following order was made and entered of record, to wit:

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.
} In Equity.

This day came William P. Thompson and Oliver H. Payne and moved the court to release their surety, W. N. Chancellor, from the obligation of their bond in the penalty of two hundred and fifty thousand dollars, dated the 21st day of June, 1884, conditioned to bid at a future sale of the property directed by a decree in this cause to be sold — the sum of one hundred and seventy-three thousand dollars, and filed in this court in this cause on the 23d day of June, 1884, pursuant to a decree rendered therein on the 19th day of June, 1884; and also moved the court to make an order directing that the sum of ten thousand dollars deposited by them in court in this cause on the 23d day of June, 1884, pursuant to the last above-named decree, together with the accrued interest thereon, be refunded to them; and it appearing to the court from the report of commissioners J. B. Jackson and W. L. Cole, filed in this cause on the 4th day of October, 1884, that the said Thompson and Payne did in all respects comply with the conditions of said bond, and that at said sale a higher bid than they undertook to make was made by J. N. Camden, which has been reported and accepted by the said commissioners, it is thereupon ordered that the said bond be cancelled and the parties thereto released them; and it is further 189 ordered that the said sum of ten thousand dollars so deposited by them, together with the interest which has since accrued thereon, be refunded to the said Thompson and Payne out of the registry of this court. It is further ordered that L. B. Dellicker is entitled to receive a commission of one per cent. on the amount so received and refunded, to be taxed in the bill of costs; and the receiver is ordered to pay the same out of any funds in his hands.

And on the same day, viz., November 3d, 1884, the following order was made and entered of record, to wit:

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY and Others. } In Equity.

It is ordered that the hearing of the motion on the petition of J. N. Camden for the confirmation of the sale of the property made in this cause on the first day of October, 1884, be, and the same is hereby, adjourned until the 2nd day of December, 1884.

On the 3d day of December, 1884, the following order was made and entered of record, to wit:

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others. } In Equity.

190 This day came James H. Carrington, A. C. Worth, William H. Beach, the Toledo National Bank, Benjamin B. Valentine, and Robert S. Blair, by W. L. Cole, their attorney, and moved the court to set aside and vacate the order made in this cause, made on the 3d day of November, 1884, returning to Oliver H. Payne and William P. Thompson the ten thousand dollars heretofore deposited by them in the registry of this court, and cancelling their bond in the penalty of $250,000.00, with W. N. Chancellor as surety, according to the prayer of their petition filed in this cause, and it appearing that notice of this motion and of the filing of said petition has been given to the said Oliver H. Payne and William P. Thompson and W. N. Chancellor, it is ordered that this motion be placed on the docket and the consideration thereof is continued until a future day of this court.

On the 21st day of November the following "petition to set aside order of Nov. 3, '84," was filed in the clerk's office, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

To the honorable judges of said court:

Your petitioners, James H. Carrington, William H. Beach, A. C. Worth, Benjamin B. Valentine, the Toledo National Bank, and Robert S. Blair, respectfully represent that they have recently 191 learned that on the 3d day of November, 1884, upon the petition of William P. Thompson and Oliver H. Payne an order was made and entered in said cause whereby, after reciting certain supposed facts which your petitioners believe are not truly stated therein, it was ordered that the bond of the said William P. Thompson and Oliver H. Payne, with W. N. Chancellor as surety, in the penalty of $250,000.00, dated the 21st day of June, 1884, and filed in this cause on the 23d day of June, 1884, be cancelled and the parties thereto released therefrom, and that the sum of ten thousand dollars deposited by said Thompson and Payne in the registry of this court pursuant to a decree entered in said cause on the 19th day of June, 1884, be refunded to them, which order remains of record in said court, and a copy thereof is hereto attached as part hereof.

Your petitioners are informed and believe and so represent that said bond still remains on file in this court, and that the said ten thousand dollars have been refunded to said Thompson and Payne as directed by said order.

Your petitioners further represent that said petition of said Thompson and Payne was filed in said cause on the same day said order was made; that petitioners had no notice of the filing of said petition or that such motion was to be or was made by any party; that they were not present in person or by counsel when said petition of said Thompson and Payne was filed or when said order was made, and they had no notice or knowledge of said petition or order until several days after the order was made and entered, and after said sum of ten thousand dollars had been returned to said Thompson & Payne.

192 Your petitioners represent and charge that said Thompson and Payne wrongfully and illegally procured said order to be made; that no opportunity was afforded any one of these petitioners, whose interests would be injuriously affected by the granting of the prayer of the petition of said Payne and Thompson, to show cause against the making of said order, and they are advised that the order made as aforesaid was improperly made the condition of said — not having been performed.

Your petitioners therefore pray that your honors will set aside, vacate, and cancel said order so made and entered on the 3d day of November, 1884, and require the said Thompson & Payne to restore and pay into the registry of this court the said ten thousand dollars which was paid to them under and by virtue of said order.

And as in duty bound your petitioners will ever pray, &c.

JAMES H. CARRINGTON.
WILLIAM H. BEACH.
A. C. WORTH.
BENJ. B. VALENTINE.
TOLEDO NATIONAL BANK.
ROBERT S. BLAIR.

C. C. COLE AND
W. L. COLE,
Counsel for Petitioners.

STATE OF WEST VIRGINIA, } To wit:
Ritchie County, }

Robert S. Blair, one of the petitioners named in the foregoing petition, being duly sworn, says on oath that he has read the said petition and knows the contents thereof, and that the facts and allegations therein contained so far as stated on his own knowledge are true, and so far as stated upon information he believes them to be true.

ROBERT S. BLAIR.

Subscribed and sworn to before me, in my said county of Ritchie, this 18th day of November, 1884.

J. H. LIMUGER,
Notary Public, Ritchie County, W. Va.

193 The following notice was filed in the clerk's office, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

To William P. Thompson, Oliver H. Payne, and W. N. Chancellor:

You will take notice that a petition has been filed in the above cause by the undersigned to set aside, vacate, and annul the order made therein on the 3d day of November, 1884, upon the petition of said Thompson and Payne, directing the return to them of ten thousand dollars theretofore deposited by them in the registry of said court and cancelling their bond in penalty of $250,000, with W. N. Chancellor as surety, dated June 21st, 1884, and filed in said cause June 23d, 1884. The motion to vacate and set aside said order as prayed for in said petition will be made on the 2nd day of December, 1884.

JAMES H. CARRINGTON,
WILLIAM H. BEACH,
A. C. WORTH,
BENJ. B. VALENTINE,
THE TOLEDO NATIONAL BANK,
ROBERT S. BLAIR,
By Counsel.

C. C. COLE AND
W. L. COLE,
Counsel for Petitioners.

194 The returns on said notice are in words and figures, to wit:

Executed November 21, '84, by handing a copy of the within to W. N. Chancellor.

G. W. ATKINSON,
U. S. Marshal,
By J. E. REMLEY, *Dep.*

STATE OF WEST VIRGINIA, } *ss:*
Harrison County, }

William C. Hood, being duly sworn, says that he delivered a copy of the within notice to Caleb Boggess, counsel of record of said William P. Thompson and Oliver H. Payne, on the 22nd day of November, 1884, by delivering it to him in person.

W. C. HOOD.

Subscribed and sworn to before me, in my said county, this 22nd day of November, 1884.

F. Y. HORNER,
Notary Public.

And on the 21st day of November, 1884, the following motion was filed in the clerk's office, to wit:

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others. } In Equity.

Upon a petition filed herein by Heman Loomis.

And now comes James H. Carrington and Richard A. Storrs and move the court to strike out the said petition filed herein by the said Heman Loomis on the — day of ——, 1884, because the same was improperly filed herein.

JAMES H. CARRINGTON,
RICHARD A. STORRS,
By Counsel.

C. C. COLE AND
WM. L. COLE,
Counsel.

195 And on another day, to wit, January 22nd, 1885, the following order was made and entered of record, to wit:

In the Circuit Court of the United States for the Dist. of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

This cause came on to be heard at the present term upon the report of sale of J. B. Jackson and W. L. Cole, commissioners heretofore appointed to make sale of the property mentioned in this cause, filed on the 4th day of October, 1884, whereby it appears that J. N. Camden bid the sum of one hundred and seventy-three thousand and fifty dollars for said property when it was offered for sale by said commissioners at public auction on the 1st day of October, 1884, pursuant to the former decree of this court passed in this cause, and that said commissioners accepted the bid of the said Camden, but

that he has not complied with the terms of said sale by paying to said commissioners the amount of said bid or any part thereof. Upon consideration of said report and the exceptions filed thereto by several parties to this suit, and the rule heretofore awarded against said Camden to show cause why said property should not be resold at his cost and risk and the petition of said Camden treated and considered as his answer to said rule, and the answers to said petition filed by the exceptors to said report, and the argument of counsel for said Camden and said exceptors, and the said Camden still failing to comply with the terms of said sale by paying the amount of his said
196 bid in cash, it is, this 22nd day of January, 1885, considered and ordered by the court that said petition and answer of said Camden is not a defiance to said rule. It is further ordered that the exceptions to said report be, and the same are hereby, sustained, and the said sale is set aside, and the said commissioners will proceed at once to advertise and resell said property in accordance with the terms and provisions of said former decree passed in this cause on the 17th day of November, 1883, for cash, which sale will be made at the costs of said Camden; and if the said property shall be sold for a less sum than one hundred seventy-three thousand and fifty dollars, the said bid of the said Camden, the court reserves for future determination in this cause the question whether the said Camden will be required to pay the deficiency.

HUGH L. BOND,
C't Judge.

197 On the 2nd day of April, 1885, the following "report of sale" was filed in the clerk's office, to wit:

Report of Sale made by Special Commissioners J. B. Jackson and W. L. Cole of the Real Estate and Property of the Defendant Company, sold under and by virtue of the Decree made in said Cause.

In the Circuit Court of the United States for the District of West Virginia. In Chancery.

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

To the honorable the judges of said court:

The undersigned special commissioners, who were appointed by the decree made and entered in the above-entitled cause on the 17th day of November, 1883, to make sale of the real estate and property of the West Virginia Oil & Oil Land Company in said decree mentioned and described, beg leave to submit the following report:

Your commissioners fixed the time of sale of said real estate and property for the 17th day of March, 1885, at 2 o'clock p. m. of said day, and they caused notices of said sale to be published once in each week for six successive weeks, to the time of sale so fixed, in each of the following newspapers, to wit: The State Journal and the Parkersburg Sentinel, both of which papers are published at Parkersburgh, Wood county, West Virginia; the Ritchie Gazette, which

is published at Harrisville, Ritchie county, West Virginia; the Mon-
roe Commercial, which is published at Monroe, in the State of
198 Michigan, and the New York Daily Tribune, published in
the city of New York, the publication in the Tribune being for
four weeks; they also caused notices of the sale by hand-bills posted
for six weeks prior to the said 17th day of March, 1885, at the front
door of the court-house of said county of Ritchie, as well as at many
other public places in said Wood and Ritchie counties, and upon
and near the real estate to be sold.

Copies of said notice, so published in each of said papers and posted as above mentioned, with proper voucher for such publications, are herewith filed and made part of this report.

Pursuant to said notice, so published and posted as aforesaid, your
commissioners, on the 17th day of March, 1885, at two o'clock p. m.
of said day, offered for sale at public auction at the Julianna-street
entrance of the United States court-house and post office, in the city
of Parkersburgh, in said district of West Virginia, the real estate
and property in said decree and notice mentioned and described,
and A. K. Leonard, the auctioneer employed by your commissioners,
in their presence and under their direction, continued to offer for
sale said property at public auction for about one hour and three-
quarters, during which time many persons bid therefor, and after
fair warning, no person offering a higher bid therefor, Charles H.
Shattuck being the highest bidder, the said real estate and property
was knocked off to him at the sum of one hundred and nineteen
thousand and one hundred dollars ($119,100.00), and the said Charles
H. Shattuck became the purchaser thereof at that price, and there-
upon the said Charles H. Shattuck, as such purchaser, paid
199 to your commissioners the said sum of ($119,100.00) one hun-
dred and nineteen thousand and one hundred dollars, which
said sum your commissioners deposited in the Citizens' National
Bank of Parkersburgh, receiving from said bank certificates of such
deposit payable to their order as commissioners, which certificates
of deposit they hold subject to the order of this honorable court.

All of which is respectfully submitted.

J. B. JACKSON,
W. L. COLE,
Special Commissioners.

Expenses of sale are as follows:

Advertisements:

The State Journal, 6 weeks, and for posters			$31 00
The Parkersburg Sentinel, 6 weeks			24 50
The Ritchie Gazette,	6	"	22 00
The Monroe Commercial,	6	"	17 40
The New York Tribune,	4	"	52 00
			$146 90
For printing and posting hand-bills			
Auctioneers for crying sale			
Commissioners, commissions for selling property and pay-over money			

200 On the 4th day of April, 1885, the following order was made and entered of record, to wit:

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.
} In Equity.

Special commissioners J. B. Jackson and W. L. Cole having, on the 2nd day of April, 1885, filed their report in this cause, from which it appears that on the 17th day of March, 1885, pursuant to former decrees made in this cause, they sold the real estate and property in the bill and proceedings mentioned to Charles H. Shattuck for the sum of one hundred and nineteen thousand one hundred dollars cash, and that said sum is deposited in the Citizens' National Bank of Parkersburgh, it is ordered that said special commissioners, Jackson & Cole, pay the same into the registry of this court, and that the clerk of this court deposit the same in two or more national banks to the credit of this cause, there to remain on deposit until the same is paid out under the further order of this court, taking from the banks such written evidence of deposit as by the court or one of the judges thereof shall be deemed best, and he shall promptly report to the court his action under this order.

And the court being requested to fix an early day to hear any and all questions that may arise upon the report of the special commissioners aforesaid, and any exceptions that may be filed
201 thereto, and upon the rule heretofore awarded against J. N
Camden to show cause why the property should not be sold at his costs and risk, it is ordered that any party in interest who desires to except to said report shall file his exceptions with the clerk of this court on or before the 4th day of May, 1885, and that said matters be set down for hearing on the 28th day of May, 1885; and it appearing to the court that said special commissioners have advanced the cost of advertising the sale, amounting to $146.90, it is further ordered that C. H. Shattuck, the receiver in this cause, do pay out of any funds in his hands to the said special commissioners the amount so paid out by them.

And on the 13th day of April, 1885, the following order was made and entered of record, to wit:

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.
} In Equity.

This day J. B. Jackson and W. L. Cole, special commissioners, appointed by a decree made and entered in this cause at a former term of this court, paid over to the clerk of the court certificates of deposit in the Citizens' National Bank of Parkersburgh, amounting to one hundred and nineteen thousand and one hundred dollars, properly endorsed to him for payment, which payment is made in pursuance of the decree made and entered in this cause on the 11th day of April, 1885; and it is ordered that the said clerk do collect said certificates of deposit and redeposit the same to the credit of this cause as required by said decree last mentioned.

202 On the 17th day of April, 1885, the following exceptions were filed in the clerk's office, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

The exceptions of the Toledo National Bank, Benjamin B. Valentine, and Robert S. Blair, filed in said cause, to the report of the commissioners of sale, filed in said cause on the second day of April, 1885.

To the judges of said court, in equity sitting:

And now come the aforesaid exceptors and except to the report of sale filed by the commissioners of sale in this cause on the 2nd day of April, 1885, whereby they report the sale of said property to Charles H. Shattuck on the 17th day of March, 1885, at the sum of $119,100, and for grounds of exception to said report they show as follows, to wit:

First. That the said sum of $119,100 is a grossly inadequate price for said property.

Second. That, at a former sale of said property made by said commissioners on the 1st day of October, 1884, one Johnson N. Camden bid therefor the sum and price of $173,050, and they are advised and claim that said sale should be confirmed to him, and he required to take such property and pay for it *or* the said price so bid for him.

These exceptors therefore pray that the court will, by proper 203 proceedings in this cause, accept the said bid of the said Camden for said property and require him to pay therefor within such reasonable time as the court may determine, and upon his failure to do so that the court will then confirm the said sale to the said Shattuck, unless some one shall offer more therefor and pay the amount of their bid into court, and upon the confirmation of the sale of said property to said Shattuck, or to any one else, for a price less than the said sum of $173,050, that the court will in this cause enter a decree over against the said Camden for the amount of his said bid, to wit, the sum of $173,050, less the sum for which the property may finally be sold; and, as in duty bound, will ever pray, etc.

C. C. COLE,
Attor. for Exceptors.

And on the 17th day of April, 1885, the following petition was filed in the clerk's office, to wit:

The Petition of The Toledo National Bank, Benjamin B. Valentine, and Robert S. Blair, filed in said Cause.

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

To the honorable the judges of said court, in equity sitting:

204 Your petitioners, humbly complaining, respectfully represent that they are creditors of the said defendant company, to whom large sums of money were decreed by the decree entered in this cause on the 17th day of November, 1883, and for the payment of which, amongst others, the sale of the property of said defendant company was directed by said decree.

That from the report of the sale of said property made by the commissioners named in the decree of November 17th, 1883, which was filed in this cause on the 2nd day of April, 1885, it appears that they sold said property, at public auction, on the 17th day of March, 1885, to Charles H. Shattuck for the sum of $119,000.00, that being the highest bid received by them for said property, and that the said Shattuck has paid them said sum in cash.

Petitioners further represent that if the sale should be confirmed to said Shattuck at this price the proceeds of sale will not be sufficient to pay them or either of them the sums so decreed to them as aforesaid or any part thereof.

Your petitioners further show that this is the third time the said property has been sold by the said commissioners under and by virtue of said decree; that at the first sale, which was held on the 1st day of May, 1884, the said Charles H. Shattuck, acting for himself, Robert Garrett, of Baltimore, and others, became the purchaser for the sum of $163,000.00, and paid said sum to said commissioners in cash, or its equivalent, but before said sale was confirmed to the said Shattuck William P. Thompson and Oliver H. Payne, citizens and residents of Cleveland, in the State of Ohio, proposed and offered, in open court, to bid and pay $173,000 for said property if the court would direct a resale thereof, and the court did thereupon order a resale of said property 205 upon condition the said Payne and Thompson should within ten days give bond, with good security, in the penalty of $250,000, payable to Lyman B. Dellicker, clerk of this court, conditioned that at any future sale of said property they would bid the sum of $173,000 for said property and comply with the terms of sale if they should become the purchasers at that price, and upon the further condition that they should within ten days deposit in the registry of this court the sum of ten thousand dollars in cash as additional security for their compliance with the offer so made by them, which said order was made and entered on the 30th day of June, 1884. The conditions aforesaid having been complied with by the said Thompson and Payne, or some one for them, the said

property was again offered for sale by said commissioners on the 1st day of October, 1884, at which sale the said Payne and Thompson, by Johnson N. Camden, bid for said property the sum of $173,000, and the said Johnson N. Camden thereupon bid $50 more, to wit, the sum of $173,050, and the property was knocked down to the said Camden at said price, it being the highest bid offered for said property; but the said Camden failed and refused to comply with the terms of said sale, and did not pay the sum so bid by him for said property, or any part thereof, and upon a rule being awarded against the said Camden to show cause why he should not be compelled to comply with the terms of said sale, and why a resale of the property should not be ordered at his risk and cost, the court, upon consideration of said rule and the answer of said Camden thereto, ordered a
206 resale of said property at the cost of said Camden, reserving
the question of the liability of said Camden for any deficiency in case at such resale the property should sell for less than the sum so bid for him as aforesaid; which said last-named order was made and entered in this cause on the 22nd day of January, 1885, during the present term of this court, and the same is particularly referred to and asked to be read and considered as part hereof.

Pursuant to the last-named order said property was sold on the 17th day of March, 1885, and purchased by said Shattuck for $119,100.

1. Your petitioners are advised and believe, and they so charge, that the said property at the last-mentioned sale sold at a great sacrifice and much below its fair cash value, and they allege and charge that this result has been accomplished by collusion and combination of Johnson N. Camden, Oliver H. Payne, William P. Thompson, and William N. Chancellor, together with other persons to your petitioners unknown.

2. Your petitioners allege and charge that the said Camden, Payne, and Thompson have been and are acting together and in the same interest in all matters pertaining to the sale of said property; that they were and are agents and officers of the Standard Oil Company, a corporation engaged in all parts of the United States in the purchase, manufacture, and sale of petroleum oil; that the said Camden is president of the Camden Consolidated Oil Company, a corporation having its principal office at Parkersburgh, in the State of West Virginia, and that the last-named corporation is controlled and managed in the interest of the Standard Oil Company.

207 3. Your petitioners allege that at the first sale of said property the said Camden was present, but did not bid for said property, and it was purchased by Charles H. Shattuck for $163,000, and when it became known to said Camden a few days after said sale that Robert Garrett, the chief executive officer of the Baltimore and Ohio Railroad Company, had a controlling interest in said purchase, he and the said Payne and Thompson determined and undertook to defeat the confirmation of the sale to said Shattuck, for the reason, among other things, that the said railroad company was then paying and had for many years been paying to said Camden Consolidated Oil Company many thousand dollars annually for the

lubricating and other oils used by it in operating its road, and, if said railroad company or the said Garrett should become the owner of said property or a controlling interest therein, the said Camden Consolidated Oil Company would thereby lose one of its most valuable customers and lose a profit of many thousand dollars per year, which it had theretofore derived from said railroad company by supplying it with oils as aforesaid, and to this end the said Camden retained and employed Charles Marshall, Esq., of Baltimore, the regular counsel of the Camden Consolidated Oil Company, to appear in this honorable court and resist the confirmation of said sale; and the said Oliver H. Payne and William P. Thompson, at the request and by the procurement of said Camden, and in the interest of said Camden Consolidated Oil Company, offered the upset bid of $173,000 for said property and gave their bond with said 208 chancellor as security, as hereinbefore alleged; but the deposit of $10,000, required by the court as a condition for setting aside the sale to said Shattuck was not made by said Payne and Thompson or either of them, but the same was paid into the registry of the court by the Camden Consolidated Oil Company, as appears by the order of the court made on the 23d day of June, 1884, and the costs of said sale and the interest upon the money which had been deposited by the purchaser, which the court required to be paid by Heman Loomis, who filed exceptions to said sale, were paid by the said Camden Consolidated Oil Company, and no part thereof was paid by the said Loomis.

4. Your petitioners further allege and charge that at the second sale of said property, held on the 1st day of October, 1884, the said Camden bid for said property in the name of the said Payne and Thompson the sum of $173,000, and immediately thereafter he bid therefor in his own name $50 more, to wit, $173,050, and afterwards declined to comply with the terms of sale, but filed his petition in this cause, asking that the sale be confirmed to him as trustee for the creditors mentioned in said decree of November 17th, 1883, by virtue of a contract which had been signed by said Camden and some of the creditors mentioned in said decree, which contract said Camden had prior to said first sale declined to act under and which had consequently been abandoned by the parties thereto, as said Camden well knew. The petition of said Camden and answers of your petitioners thereto are referred to and prayed to be read and considered as part hereof.

209 5. Your petitioners further represent and charge that after said Camden had become the purchaser of said property and refused to comply with the terms of the sale thereof as aforesaid he employed counsel for said Payne & Thompson, who, in their names, but at the instance and by the procurement of said Camden, filed in this cause a motion for cancellation of the said bond so executed by the said Payne, Thompson, and Chancellor as aforesaid, and that the said $10,000 so deposited as aforesaid be returned to said Payne and Thompson, which said motion was filed on the 3d day of November, 1884, and on the same day, without notice to your petitioner or to any party in interest, so far as they know, an order was made

as prayed for, purporting to cancel said bond and ordering said $10,000 to be paid to the said Payne and Thompson; whereupon the said $10,000 was at once paid to the said Camden Consolidated Oil Company, and its receipt therefor was given to Lyman B. Dellicker, clerk of this court, and the same remains in his possession as part of the record of this cause, and it is referred to as part hereof.

7. Your petitioners further show that upon the motion of themselves and other creditors of said defendant company, a rule was awarded against said Camden in this cause requiring him to show cause, if any he could, why he should not be compelled to comply with the terms of said sale, and why said property should not be resold at his risk and cost; and upon the hearing of said rule, on the 22nd day of January, 1885, during the present term of this court,
the court ordered a resale of said property at the cost of said
210 Camden, but reserved the question of said Camden's liability
upon his said bid for the future determination of the court in this cause.

8. Your petitioners allege and charge that at the time said property was purchased by the said Camden at the sale thereof, the 1st day of October, 1884, for $173,050, it was well worth that sum of money, and at no time since has it been worth less than that sum; that since that time there has been little or no change in the condition or value of said property, but the same is now worth, as your petitioners are informed and believe, more than $173,050.

Your petitioners aver and charge that the said Camden procured the return of said deposit of $10,000 and the order purporting to cancel said bond upon the representation made on his behalf by his counsel, at his instance and by his direction, that he had made a *bona fide* bid for said property higher than the said Payne and Thompson had undertaken to make, and that he had complied or would comply with the terms of said sale.

Your petitioners are advised, and they believe and so charge, that the said Camden is liable to take the said property and pay for it at the sum bid therefor by him, and that he should be required so to do by proper proceedings in this cause, and that if he should fail so to do within such time as may be fixed by the court that a decree should be entered against him for the difference between his said bid and what the property may finally be sold for.

211 *Prayer.*

Your petitioners therefore pray that the court will rehear the rule heretofore awarded against the said Johnson N. Camden in this cause to show cause why he should not be compelled to comply with the terms of said sale and why the said property should not be sold at his risk and costs, and that the order made herein on the 22nd day of January, 1885, may be modified and the bid so made by said Camden for said property on the first day of October, 1884, of $173,050, be accepted and he required to pay said sum so bid by him in cash into the registry of the court, and in case he shall do so that the said sale be confirmed to him and the sale to said Shattuck, made on the 17th day of March, 1885, be set aside and held for naught.

But if said Camden shall fail to pay the said sum of money so bid by him within the time to be fixed by the court that then the sale to the said Shattuck be confirmed, unless some one shall offer and pay into the registry of this court a larger sum therefor, and that a decree be entered in this cause over against said Camden for the amount of his said bid, to wit, the sum of $173,050, less the sum for which said property may finally be sold.

Your petitioners pray for such other, further, and general relief as to equity appertains and the nature of the case may require; and as in duty bound they will ever pray, &c.

TOLEDO NATIONAL BANK,
BENJAMIN B. VALENTINE,
ROBERT S. BLAIR,
By Counsel.

C. C. COLE & W. L. COLE,
Counsel for Petitioners.

212 STATE OF WEST VIRGINIA,
Ritchie County, } *To wit:*

Robert S. Blair, being duly sworn, says upon oath that he is one of the petitioners named in the foregoing petition, that he has read the same and knows the contents thereof, and that the matters therein set forth, so far as stated on his own knowledge, are true, and those therein stated upon information he believes to be true.

R. S. BLAIR.

Subscribed and sworn to before me this 16th day of April, 1885.

[SEAL.] WILL A. STRICKLER,
Clerk C't C't of Ritchie Co., W. Va.

To Johnson N. Camden & C. H. Shattuck:

Take notice that the foregoing petition has been filed in the above-styled cause, and that on the 27th day of April, 1885, we will call the same up for the action of the court and move the court to grant the prayer of said petition.

TOLEDO NATIONAL BANK.
BENJAMIN B. VALENTINE.
ROBERT S. BLAIR.

C. C. COLE & W. L. COLE,
Counsel for Petitioners.

On this 23d day of April, 1885, I delivered a copy of the within petition and notice thereto attached, duly attested by the clerk of the court, to Johnson N. Camden and C. H. Shattuck, at Parkersburgh, in said district.

J. L. CLARK,
Dep't Marshal.

213 On the 17th day of April 1885, the following "exceptions" were filed in the clerk's office, to wit:

Objections and Exceptions Filed by Heman Loomis to a Report of Sale Filed by J. B. Jackson and W. L. Cole, Special Commissioners, in Above Cause on the 4th Day of April, 1885.

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

The said Loomis excepts to said report and objects to a confirmation of the sale therein reputed to C. H. Shattuck at the sum of $119,100:

First. Because of the gross inadequacy of the price.

Second. Because the said Shattuck was, at the time of said sale and still is, the receiver of the property upon which he made the bid, and was disqualified to purchase by reason of his fiduciary relations to said property.

Third. Because the sale occurred at a time when the court had, on an *ex-parte* application and without allowing the said Loomis a hearing, created a doubt of the validity of the liens adjudged to said Loomis by a decree rendered on the 17th day of November, 1883, in this cause, by virtue of which decree said sale was had.

Fourth. Because by a decretal order made on the 22nd day of January, 1885, the court had directed a resale of the property without adjudicating the liability of J. N. Camden on his bid of $173,050, made on October 1st, 1884, and then pending before the court.

214 Fifth. Because the said J. N. Camden had, on the 3d day of November, 1884, procured an order to be entered releasing the money and bond deposited by W. P. Thompson & O. H. Payne under the order of June 30th, 1884, and the said Camden had done this on the representation that he had relieved them by bidding $50 in excess of their upset bid of $173,000.

Sixth. Because the condition of the record was such, and such were the uncertainties of the parties by reason of the doubtful state of the record, that advantage was taken of circumstances to sacrifice the property to the prejudice and in fraud of the exceptor's rights.

Wherefore, and for divers *and* other causes of exception to said report, the exceptor prays that the sale be not confirmed, and he relies for support of his exceptions upon the record in this cause and the evidence filed herein.

And as in duty bound, &c., he will ever pray, &c.

Parkersburgh, W. Va., April 17th, 1885.

HEMAN LOOMIS,
By Counsel.

B. M. AMBLER,
Counsel and Solicitor for Loomis.

215 On the 23d day of April, 1885, the following "petition" was filed in the clerk's office, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. Mayhew & Co.
vs.
The West Virginia Oil & Oil Land Company & Others.

To the honorable judges of said court:

The petition of Heman Loomis respectfully shows—

I. That the petitioner is authorized by virtue of an order made in this cause at the January term, 1883, to prosecute this cause, and is the same person in whose favor two several large sums of money were adjudged by a decree entered herein on the 17th day of November, 1883.

II. Of the total amount of all claims set forth and adjudged by said decree, there remained unpaid on March 17th, 1885, not less than $191,000, and by the terms of the decree the sum of $49,111.10 was adjudged in favor of said Heman Loomis, as last in order of rank and priority, and amounted on March 17th, 1885, with accrued interest, to $53,039.98.

III. On March 17th, 1885, the property of the defendant company was bid off by C. H. Shattuck, receiver of this court in this cause, for $119,100. If the sale is confirmed to Shattuck at that price, and if nothing more is realized from the trust being administered by this honorable court, your petitioner will be paid no part of said $53,039.98 and he will be utterly remediless.

IV. On May 1st, 1884, the said Shattuck bid at a sale of the property had on that day the sum of $163,000, and the sale was set aside for inadequacy of price by a decree entered herein on the
216 30th day of June, 1884, upon an upset bid of $173,000 offered by W. P. Thompson and Oliver H. Payne, who were required to pay $10,000 into the registry of the court and to give a bond with security in the penalty of $250,000, conditioned to bid $173,000 at any future sale of the property.

V. The foregoing facts appear of record in this cause.

VI. The said Thompson & Payne were both officers and agents of the Standard Oil Company, and J. N. Camden herein mentioned was then, as now, president of the Camden Consolidated Oil Company. The said two oil companies above named have intimate and harmonious business relations, and, in fact, the Camden Consolidated Oil Company is controlled by the Standard Oil Company, and the said Camden & Thompson & Payne were acting together, and were desirous of gaining control of the property aforesaid for the furtherance of their mutual oil interests and operations. The Camden Consolidated Oil Company paid the $10,000 required of said Thompson & Payne, as appears by an entry on the record.

VII. After the sale at $163,000 had been so set aside, and while the bond for $250,000 and the cash deposit of $10,000 were being held by the court, the commissioners made a new sale on the 1st day

of October, 1884. While that sale was in progress the said Camden
bid on behalf of said Wm. P. Thompson and Oliver H. Payne the
sum of $173,000, and directly afterwards the said Camden bid the
sum of $173,050 and no other bids were offered, and the commis-
sioners knocked the property down to said Camden at said $173,050,
and Camden stated to said commissioners that he would pay said
sum of $173,050 in cash if required by the court, but that he
217 would tender a performance of a certain contract (filed with
the report of that sale) in discharge of his bid.

VIII. Before that sale your petitioner had notified said Camden to bid under said contract, as shown by the report of said commissioners.

IX. After Mr. Camden had bid the $173,050 he (the said Camden) procured an order to be entered in this cause on the 3d day of November releasing Thompson & Payne from all liability on their upset bid, and the $10,000 was paid over to Camden's said company.

Your petitioner learned that such an order would be applied for, and your petitioner did not object to having that order entered. Your petitioner believed that Mr. Camden intended to be personally liable for the bid made by him in excess of the bond, and your petitioner knew that the said J. N. Camden had so stated, and he believed that Mr. Camden (who had been accepted in the commissioners' bond as surety for $200,000) was amply responsible for the $173,050, and in fact the order releasing Thompson & Payne was obtained on the representation made by the agency of Camden that Camden's bid had relieved them.

X. The court refused to confirm the sale to Mr. Camden on the basis of said contract, adjudged that Camden had not complied with the terms of sale, and directed the commissioners to resell the property, reserving for future adjudication the question of Camden's liability for any deficiency in price; all of which appears by a decretal order passed and entered herein on the 22nd day of January, 1885.

XI. The commissioners offered said property again on the
218 17th day of March, 1885, at which time some arrangement had
been made by which the interests of the Standard Oil Com-
pany and of the parties represented by Mr. Receiver Shattuck had
been settled on a basis not known to your petitioner, under which
the property was to be bought at the lowest figure at which it could
be got, and Mr. Robert Garrett, whom Mr. Shattuck formerly as now
represented in part at least, and who had been the real party on the
first bid for $163,000, had some, tacit or express, direct or indirect,
understanding with Mr. Camden and his friends, whereby the prop-
erty should be bought for a low figure and without competition be-
tween them, and the said Camden now desires this sale to be con-
firmed at $119,100, and pretends that he is not liable on his bid of
$173,050.

XII. Your petitioner charges that when said Camden bid $173,050 on October 1st, 1884, he intended and believed that he was making himself personally liable therefor, and he so stated, in effect, to J. B. Jackson and W. L. Cole, commissioners of sale, when they demanded his complying with the terms of sale. The said Camden is a member of the U. S. Senate.

At the time Camden was asked to comply with the terms of sale he stated to the commissioners that he would pay the $173,050 in cash if required by the court, but that he would tender said contract in lieu of cash, and let the court pass upon that first, and he requested the commissioners not to say anything about the cash, and it was not mentioned by them.

XIII. Your petitioner is advised that said Camden is estopped to deny his personal liability as a bidder after having procured 219 the order of November 3rd, 1884, and he believes that the condition of the record in this cause at the time of said sale tended and contributed seriously to a sacrifice of the property.

In tender consideration whereof your petitioner prays that the decree or order made in this cause on the 22nd day of January, 1885, may be set aside and modified; that the matters arising therein and mentioned therein may be reheard, and that the court will determine the questions arising upon the bid of J. N. Camden and his liability thereon before passing upon the report of sale.

Your petitioner further prays that the said J. N. Camden shall be decreed to be liable for the amount of his bid, to wit, $173,050, and that an opportunity be given him to comply with the terms of sale by paying the said sum of $173,050, and in default thereof that his liability may be duly enforced by appropriate proceedings to be had for that purpose.

Your petitioner further prays that the liability of said J. N. Camden having been first adjudicated, the court will then refuse to confirm the sale to said Shattuck, at $119,100, mentioned in the pending report of said commissioners, unless the said Camden shall elect or desire that the same be confirmed, and if the said Camden shall so elect, then the further prayer of your petitioner is that a decree be passed and entered against the said J. N. Camden for the difference between the amount bid by him of $173,050 and the bid of $119,100 bid by said Shattuck; and your petitioner prays such other, general, and further relief in the premises as in equity may be decreed just and proper and as the nature of the case may require; and as in duty bound, &c., your petitioner will ever pray, &c.

HEMAN LOOMIS,
By Counsel.
By B. M. AMBLER,
Solicitor for Petitioner.

220 STATE OF MICHIGAN, *County of Lenawee,* } *To wit:*

This day personally appeared before me Charles B. Bothum, a notary public of said county, in my —, county aforesaid, Heman Loomis, whose name is signed by his counsel to the foregoing petition, and who, being duly sworn, upon his oath says that he has read said petition and believes that all of the allegations thereof are true as stated; that petitioner lives in Michigan and has not personal knowledge of the matters alleged as occurring in West Virginia, but he is reliably informed that all of the statements contained in the petition are true, as he verily believes; and that affiant's representative, as agent and as counsel to protect his interests in the premises in West Virginia, is B. M. Ambler, whose signature appears above.

HEMAN LOOMIS.

Sworn and subscribed before me this 18th day of April, 1885.
Witness my hand & official seal.
[SEAL.] CHARLES B. BOTHUM.
Notary Public.

STATE OF MICHIGAN, } *ss:*
County of Lenawee, }

I, David A. Bixby, clerk of said county of Lenawee and of the circuit court therein, being a court of record, having a seal, do hereby certify that Charles B. Bothum, whose name is subscribed to the annexed affidavit and therein written, was at the time of taking such affidavit a notary public in and for said county, duly commissioned and qualified, and duly authorized by law to take the same; and further, that I am well acquainted with the handwriting of such notary public and verily believe that the signature to the said affidavit is genuine, and as such entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at Adrian, this 18th day of April, A. D. 1885.

[SEAL.] DAVID A. BIXBY, *Clerk.*

221 To C. H. Shattuck and J. N. Camden, named in within petition:

You will take notice that the within petition has been filed in the United States circuit court for the district of West Virginia in the cause in which it is entitled, and that the petitioner will move the said court, on the 27th day of April, 1885, to take action on said petition and to grant the relief therein prayed.

HEMAN LOOMIS,
Petitioner, By Counsel.

B. M. AMBLER,
Solicitor for Heman Loomis.

On this 24th day of April, 1885, I delivered a copy of the within petition and notice therein attached, duly attested by the clerk of the court, to Johnson N. Camden & C. H. Shattuck at Parkersburgh, dist. of W. Va.

J. L. CLARK,
Dep't Marshal.

On the 23d day of April, 1885, the following "affidavit" was filed in the clerk's office, to wit:

UNITED STATES OF AMERICA, } ss:
District of West Virginia, }

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others.

222 A. K. Leonard, being duly sworn, deposes and says that he resides at Parkersburgh, in the State of West Virginia, and his business is that of an auctioneer; that he was employed by J. B. Jackson and W. L. Cole, special commissioners, to act as the auctioneer for them in making sale of the real estate and property which they were authorized to sell by the decree in the above-styled cause; that on the first day of October, 1884, the day fixed for the second sale of said property, Johnson N. Camden asked deponent whether he was to act as auctioneer in making said sale, and deponent replied that he was; whereupon the said Camden authorized deponent to commence crying said property at the bid of Oliver H. Payne and William P. Thompson of one hundred and seventy-three thousand dollars; and deponent did accordingly commence to cry said sale at the said price of one hundred and seventy-three thousand dollars, announcing at the same time that it was the bid of said Payne & Thompson; and thereupon the said Camden, who was present at said sale in person, bid for said property the sum of one hundred and seventy-three thousand and fifty dollars, and, after crying his said bid for some time, and getting no other bid, deponent, by direction of said commissioners, knocked the property down to the said Camden at his said bid of $173.050.00.

Nothing was said by said Camden, at or before said sale, in the hearing of deponent, indicating that his bid for said property was for any other person than himself.

A. K. LEONARD.

Subscribed and sworn to before me this 23d day of April, 1884, at Parkersburgh, district of West Virginia.

L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

223 And on the 27th day of April, 1885, the following order was made and entered of record, to wit:

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL & OIL LAND COMPANY & Others. } In Equity.

On this 27th day of April, 1885, the Toledo National Bank and others, by W. L. Cole, Esq., their attorney, and Heman Loomis, by B. M. Ambler, Esq., his counsel, moved the court to grant the relief prayed for in the several petitions by them filed during the present month, and they further moved the court to hear the exceptions filed by them to the report of sale filed on the 4th day of April by Messrs. J. B. Jackson and W. L. Cole, special commissioners; and thereupon J. N. Camden, named in the said petitions, by J. B. Jackson, Esq., his counsel, moved the court to strike said petitions from the files; which motion of said J. N. Camden is set for hearing on the 14th day of May, 1885. It is further ordered that any parties named in said petitions who may desire to resist the same have leave to plead, answer, or demur thereto within ten days from this date, and any party who proposes to rely upon an answer to either of said petitions is required to lodge the same with the clerk of this court within ten days from this date, saveing to the party so lodging an answer the right to demur or file a plea before the answer is regularly filed.

And thereupon the said Toledo National Bank, R. S. Blair, & B. B. Valentine, by W. L. Cole, Esquire, their counsel, and Heman Loomis, by B. M. Ambler, his counsel, asked leave to enter a
224 motion for a rehearing and a reargument upon a decreetal order entered on the 22nd day of January, 1885, during the present term, directing a resale of the property; which leave is granted.

And the said Toledo National Bank & others, by W. L. Cole, their counsel, gave notice to W. P. Thompson and O. H. Payne and W. N. Chancellor, through Caleb Boggess, their counsel, who is present in court, for the hearing of a petition filed at the last term of the court, praying the court to set aside an order made herein on the 3d day of November, 1884, regarding the liability of Wm. P. Thompson and O. H. Payne upon their bond of $250,000, given to secure their upset bid of $173,000 for the property in this cause, and all matters arising upon the several exceptions and petitions and motions herein mentioned and set for hearing upon said May 14th proximo.

225 Answer of J. N. Camden to the petition of the Toledo National Bank & others, lodged in the clerk's office in pursuance of order of court of 27th day of April, 1885, is in words and figures following, to wit:

The Answer of Johnson N. Camden to the Petition of the Toledo National Bank, Benjamin B. Valentine, and Robert S. Blair, Filed in the Above-Entitled Cause.

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. Mayhew & Co.
vs.
The West Virginia Oil and Oil Land Company.

To the honorable the judges of said court, in chancery sitting:

The respondent, Johnson N. Camden, now and at all times hereafter, reserving all manner of benefit and advantage to himself of exception to the many errors and insufficiencies in said petition contained, for answer thereto or unto so much or such parts thereof as respondent is advised is material for him to make answer unto, answering, says:

That respondent is informed that the petitioners are creditors of the defendant company, and that by the decree made and entered in said cause on the 17th day of November, 1883, by this honorable court, the real estate and property of the defendant company, as mentioned and described in the bill and proceedings of this
226 cause, *was* decreed to be sold to pay the several creditors of said defendant company, as recited in said decree, of whom the petitioners were a part.

Respondent admits that it appears by the record of the proceedings in said court that the special commissioners appointed by said decree of November 17th, 1883, to make sale of said property, proceeded to make sale thereof, pursuant to the terms of said decree, on the 17th day of March, 1885, on which day Charles H. Shattuck, being the highest bidder, became the purchaser thereof at the sum of $119,100, which sum was by the said Shattuck paid into the registry of the court to the credit of said cause.

Respondent is not advised, should said sale be confirmed, whether or not the proceeds of said sale would be sufficient to pay to the petitioners the sums so decreed to be paid them, and without admitting or denying this allegation of the petition, calls for proof of the same.

Respondent denies that this is the third time the said property has been sold by the said commissioners under and by virtue of said decree, but admits that said property has been offered for sale by said commissioners, under and by virtue of said decree, upon three different occasions, the first two of which said commissioners having reported to the court, the court refused to confirm, but directed a resale, and so respondent submits there was no sale of said property at either of the times first and second mentioned in said petition. As to the third time mentioned, the court having
227 not as yet acted upon the report of sale of said commissioners, respondent is not advised whether the bid of the purchaser will be accepted and the sale confirmed or not.

Respondent admits that said commissioners, in pursuance of said decree, on the first day of May, 1884, offered said property for sale, and that on said day Charles H. Shattuck, acting for himself and respondent is informed and believes for Robert Garrett, of Baltimore, and others, became the purchaser thereof for the sum of $163,000.00, and as respondent is further informed and believes, paid said sum to said commissioners.

Respondent is further informed and believes and therefore admits that, upon the application of the said Shattuck for a confirmation of the report of said sale, William P. Thompson and Oliver H. Payne, citizens and residents of Cleveland, in the State of Ohio, proposed and offered in open court to bid and pay $173,000.00 for said property if the court would direct a resale thereof, and the court did thereupon refuse to confirm the sale so made to said Shat-

tuck and did order a resale of said property upon condition the said Thompson & Payne should within ten day give bond with good security in the penalty of $250,000.00, payable to the clerk of this court, conditioned that at any future sale of said property they would bid the sum of $173,000.00 for said property, and comply with the terms of sale if they should become the purchasers at that price, and upon the further condition that they should within ten days deposit in the registry of the court ten thousand dollars in
228 cash as additional security for their compliance with the offer so made by them.

Respondent is informed and believes and therefore admits that the conditions so imposed by the court upon the said Thompson and Payne having been complied with by them, the said property was again offered for sale by said commissioners on the first day of October, 1884, on which day respondent, at the request of the said Thompson and Payne and for their account, authorized the bid of the sum of $173,000 for said property, and said bid being made and cried for and on behalf of said Thompson and Payne and at their request (neither of them being present at said sale), respondent, for the creditors mentioned in said decree of November 17th, 1883, and in pursuance of the contract made with said creditors, which said contract is filed with the report of sale of said commissioners, filed in the papers of said cause, and is prayed to be read in connection with and as a part of this answer, bid the further sum of fifty dollars, to wit, the sum of $173,050.00, and the property was knocked down to respondent, his bid being the highest bid offered for said property.

Respondent denies that he failed or refused to comply with the terms of said sale, as charged in said petition; on the contrary thereof, having bid for said property on behalf of himself and others of the creditors in said decree mentioned, who were parties to the contract above mentioned, and which respondent is advised constituted an assignment on the part of such of the creditors as signed the
229 same to him of their respective interests in said decree, respondent exhibited said contract to said commissioners and tendered the same to them in discharge of the amount bid by him for the purchase of said property, with the request that said contract be reported by said commissioners to the court for its action in the premises.

Respondent admits that a rule was awarded against him by this honorable court to show cause why he should not be compelled to comply with the terms of sale, and why a resale of said property should not be ordered at respondent's risk and costs.

Respondent filed his petition setting up said contract entered into with said creditors, as hereinbefore mentioned (which petition of respondent was treated, as respondent is advised, as an answer to said rule). in which petition respondent prayed "that he be allowed to apply the claims and debts adjudged by said decree in discharge of his liability for the purchase-money; that his compliance with the terms of said contract may be considered and decreed as compliance with the terms of said sale; that the said contract may be received in discharge of his bid; that the sale be confirmed, and that a deed be made to respondent for the said property." Upon the hearing of which rule and said answer the court ordered a resale of said property, reserving the question of the liability of respondent for any deficiency should the property sell for less than the bid of respondent, the court deciding that the answer of respondent not to be defence of said rule.

230 Respondent is advised by counsel that the court, having refused to confirm said sale at the bid so made by respondent and in entering the decree ordering a resale of said property, that all liability upon the part of the respondent for such deficiency was determined and respondent discharged therefrom; that respondent was not liable as purchaser at sale until the court had accepted the bid of respondent and confirmed the sale absolutely.

Respondent, further answering, says that the said property at the said last-mentioned sale did not sell at a great sacrifice; on the contrary thereof, by reason of the stringency in the money market and the decrease in value of property of the same kind as the property sold, and the manifest decrease in the production of said property, as shown by the reports of the receiver, that said property was not as valuable by many thousands of dollars as when respondent first bid on same, and respondent would not at said last-mentioned sale, had he been present, have bid anything like the former sum bid by him, except as trustee for the creditors under said contract.

Respondent denies that the deficiency in price at said last sale was accomplished by collusion and combination of respondent, Oliver H. Payne, William P. Thompson and William N. Chancellor, together with other unknown persons, as charged.

231 Respondent admits that, the property being large and valuable and the probable amount for which said property would sell being large, that the sale being for cash, would be more than any one individual would be willing to raise and invest in that character of property, and that certain persons, some of whom are named in the petition, did agree to join in the purchase of said property, and if the property was so purchased by them that they would form a corporation to own and work said property.

Respondent denies that there was any combination or intention upon his part to beat down the price of said property or to procure the same for less than its fair cash value; on the contrary thereof, said arrangement was entered into *bona fide* to compete for the purchase of said property and to bid for the same to the fair value thereof; and respondent states as his opinion and belief that without such an arrangement the property would not have brought as much as it did at that sale.

Respondent avers that none of the parties were interested in any of the liens upon said property, except the Thompson debt, represented by himself; that many of the other lien creditors were present at said sale, as he is informed, and that others were present by counsel; that the sale was fair and open and ample opportunity afforded to all interested to bid for the same, and to the best of his information, from the present condition and character of the property, the same was sold for all it would bring, and more than it would now, probably, bring upon another resale.

232 Respondent denies that he, Payne, and Thompson are acting together in all matters pertaining to the sale of said property; on the contrary thereof, respondent avers that at the time the said Payne and Thompson prayed the court to open the bidding upon said property respondent had left this country for Europe, and respondent was not a party to said proposition and did not know until some time afterwards that such proposition had been made and that the court had accepted and acted on the same.

And respondent, further answering, denies that at the sale of October 1st, 1884, when he offered the bid for Thompson and Payne, he was personally interested in said bid; on the contrary, as hereinbefore stated, respondent authorized the bid of $173,000 for them at their request, and afterwards bid over said sum, representing himself and other creditors, and in said last-mentioned bid the said Thompson and Payne were not personally interested. Respondent, further answering, denies that at the time of said bidding he was an officer of the Standard Oil Company, nor is he now an officer of said company. Respondent admits that he is the president of the Camden Consolidated Oil Company. Respondent avers that said company is a separate and independent organization from the Standard Oil Company, and whilst engaged in the same business, having business relations with the Standard Oil Company, its business is governed and controlled by its own board of directors.

Respondent admits that he was present at the time the property of the defendant company was first offered for sale, and that he
233 did not bid therefor, as charged in said petition, but denies that he did not bid for the reasons therein alleged.

Respondent, by way of explanation of his reason for not bidding at said sale, avers and charges that the decree of the 17th day of November, 1883, was a consent decree, agreed to before the same was entered by the court by all the creditors therein mentioned, either in person or by their respective attorneys; that said creditors, before the entering of said decree, were convinced that said property, under expensive litigation and in the management of a receiver of the court, would not for a long time, if ever, discharge their respective debts; that if an arrangement could be made whereby the parties could agree to the sale of the property and to have it purchased by a competent agent, who should manage the same for the common interest of the creditors by the development of new wells on the territory and the careful and economical management of the property, it might pay all the liens in the manner agreed upon in a reasonable time. In order to accomplish this end the lien creditors consulted together for several days in arranging their respective priorities and agreeing on the terms of the decree as named in the said decree, but your respondent avers that under the contract entered into on the same date, but prior to the entering of said decree, mutual concessions and compromises were made in reference to priorities which materially changed the priorities of payments as made in said decree, as will be shown by reference to the

234 decree and to the contract between the said respondent and the creditors filed with the answer of the respondent to the petition in this case, both dated on the 17th day of November, 1883. Your respondent avers and charges that in agreeing to said consent decree and to the contract of the same date, herein referred to, that said contract was based upon valuable considerations to most, if not all, of the creditors named therein. Your respondent avers that amongst other things Storrs, whose debt was paid off under and by virtue of said agreement, in addition to the payment of his debt, required Heman Loomis to assign him $5,340.00 of the first money decreed to him for the purpose of reimbursing him for certain stock of the West Virginia Oil & Oil Land Company held by him, and also that certain suit or suits in Michigan in which the said Storrs or the said Carrington or one or both of them were interested as parties were to be dismissed, which suit or suits respondent is advised were dismissed after the decree was agreed upon and before it was entered. Said suits, as respondent was informed, involved over $20,000. The said Storrs was further allowed to receive the money due him under said decree, his debt standing upon the same footing with the debts of Thompson and the first part of the Loomis debt, to be paid out of the money then in the hands of the receiver, and which was paid to said Storrs from said money, which was assented to by your respondent, representing the Thompson debt, and
235 by the said Loomis, Carrington declining to enter into said agreement unless Storrs was first satisfied.

It was further agreed by the terms of said contract that the said Loomis, instead of receiving $39,476.61, adjudged by said decree to be prior to the debt of J. H. Carrington, that the Carrington debt should be paid *pro rata* with the Loomis debt, the said Carrington to receive 60 per cent. while the said Loomis received but 40 per cent., and that the said 60 per cent. should continue to be paid to Worth, Beach, Toledo National Bank, Blair, & Valentine until their debts were paid, thus giving to the creditors an advantage over Loomis, the said Camden at the same time making concessions and advancements in money on his part to the said Loomis in consideration of the residuary interests the said Camden and Loomis would have in the said property after the payment of the debts of all the other creditors, so that said contract was based upon valuable money considerations which passed at the time and was made in good faith in order to secure the consent of all the parties to enter said decree, which contract the respondent desired to carry out in good faith, and the property would have been bid for by him under said contract at the time it was first offered for sale but for the fact that, after entering the said decree and before the said sale, respondent was advised and informed that the debt of Loomis was attacked in this honorable court, and such proceedings were had that, by direction of the court, as to the debt of the said Loomis, the amount thereof should be paid into the registry of the said court to
236 await the determination of the proceedings in relation thereto, thus requiring a large sum of ready money to be raised for that purpose; and the said creditors not indicating any willingness

to aid your respondent in raising said money, and the respondent at the time said contract was entered into not contractiag or expecting to be called upon to advance any money upon his bid to purchase under said contract, the said contract not requiring him to do so, respondent was advised that it was not safe for him to bid upon the said property under the said contract unless he was prepared to pay at least the amount of the Loomis debt into court. Under this advice respondent declined or refrained from bidding at the first sale of the property on the ground that he might incur personal liability in bidding under the contract if the amount of the Loomis debt was required to be paid into court to await indefinite litigation.

Respondent avers that by the subsequent proceedings upon said first sale said sale was set aside, and the proceedings attacking the debt of said Loomis were dismissed or so modified by the opinion and action of the court in entering decree ordering a resale under said former decree that respondent was advised and believed that the obstacles to his bidding under said contract were substancially removed, and upon written notice from Heman Loomis to respondent, requiring him to carry out said contract in good faith or to be held personally liable for his failure to do so, respondent in good faith bid for said property under said contract and tendered
237 the same, as hereinbefore mentioned, to the court in discharge of his bid, supposing, as he had good right to suppose, that said contract would be received in discharge of his bid, as the same had been entered into in pursuance of the understanding when said consent decree was entered, and that said property would not be forced upon said respondent at a price in cash largely in excess of any sum he would bid therefor on a cash basis, and therefore respondent denies that he at any time confederated with others, as charged, to defeat the confirmation of the sale of said property upon the first report of sale or at any other time, but, on the contrary thereof, was desirous of loyally carrying into effect his contract made with said creditors, as herein stated, and respondent is still willing to carry out the contract in good faith with the creditors upon his bid under said contract upon a confirmation thereof by the court.

Respondent, further answering, denies that when it became known to him, after said first sale, that Robert Garrett, chief executive officer of the Baltimore and Ohio railroad, had a controlling interest in said purchase, he, with said Payne and Thompson, determined and undertook to defeat the confirmation of said sale for the reason, among other things, that the said railroad company was then paying, and had for many years been paying, to said Camden Consolidated Oil Company many thousand dollars annually for the
238 lubricating and other oils used by it in operating its road; upon the contrary thereof, respondent again avers that when the said Payne and Thompson filed their petition to open the said bidding he had sailed for Europe, as hereinbefore stated, and that he was not a party to said proceedings and had no knowledge that any attempt would be made to set said sale aside, except for the legal reason that the receiver could not become the purchaser as

hereinbefore stated; and respondent says it is not true that the Camden Consolidated Oil Company was at that time, and had been for a long time, furnishing said B. & O. Company lubricating oils and receiving therefor large sums of money; on the contrary thereof, the Camden Consolidated Oil Company had not furnished any oils to said B. & O. railroad for about five years prior to said sale.

Respondent admits that he retained Charles Marshall, of Baltimore, to appear in this honorable court to resist the confirmation of said first sale, and avers that he did so in the interest of himself and said Loomis, and by consultation and agreement with the said Loomis and his counsel, said Loomis and respondent having mutually large interest in the contract of the 17th of November, 1883, based upon the consent decree, which could only be protected by a sale and purchase under the contract, and it was therefore the mutual interest of the said Loomis and your respondent that said sale should be set aside in order that said respondent might be able to bid at a future sale under said contract.

239 Your respondent and the said Loomis, being so advised, were of the opinion that C. H. Shattuck, who was acting as receiver of the court, could not legally become the purchaser of the same property under the decree of the court. Respondent's view was to have the sale set aside for that reason and upon that ground alone.

Respondent denies that he obtained the services of Marshall with any understanding between Payne and Thompson and himself, and your respondent is informed and believes that the services and action of said Marshall in said cause *was* directed only to the effort to set aside said sale for the legal cause stated, that being the only purpose for which said Marshall was retained by respondent, and respondent was surprised when he learned some time afterward, in Europe, the turn the case had taken.

Respondent denies that said Thompson and Payne, at the request and by the procurement of respondent and in the interest of said Camden Consolidated Oil Company, offered the upset bid of $173,000 for said property and gave their bond therefor, as charged; on the contrary, respondent insists that said upset bid was made by the said Thompson and Payne without conference with respondent, as hereinbefore stated. Respondent admits that the deposit of $10,000.00 was paid into the registry of the court, as respondent is informed, by the check of the Camden Consolidated Oil Company, but he is informed that said payment was so made by said company through its treasurer for said Thompson and Payne and at their request.

240 Respondent admits, from information and belief, that said company advanced to said Loomis the money as charged, but denies that it was money paid by said company on its own account; on the contrary, respondent is informed that the said Loomis assigned to said company a portion of his judgment as a security to said company for said loan, which assignment the said company now holds.

Respondent admits that he bid for said property at the sale of

October 1st, 1884, as hereinbefore mentioned, but denies that he refused to comply with the terms of sale, as he was ready and willing to do under his said contract, and referes herein to his petition filed in said cause as his answer to said rule issued against him as his evidence of willingness to comply on his part, and refers to the exceptions filed by the petitioners, which he prays to be read as part of this answer, to the confirmation of the sale, as to their objections to his compliance; and inasmuch as the petitioners by their action prevented respondent from complying, respondent submits that he should not now be questioned by the said petitioners for his failure to do so, as they by their action relieved him from all responsibility in the premises.

Respondent denies that he employed counsel for Payne and Thompson to obtain a cancellation of their bond, as charged, and the return of said deposit of $10,000. Respondent was not in attendance on said court, nor was he in Parkersburgh when said motion was so made, and was in no way responsible for their action.

241 Respondent admits the rule against him as charged and the decree of the 22nd of January, 1885, ordering a resale of said property. Respondent, however, submits that by said decree of resale he was discharged from further liability upon his bid of $173,050, there being no acceptance of said bid by the court and a confirmation of said sale, which respondent is advised were necessary to charge him under said bid.

Respondent denies that said property, in his judgment, was worth $173,050 on a cash basis at the sale named. On the contrary thereof, had respondent believed that he could not bid on the basis of the contract and pay the creditors out of the production of the property, as therein agreed, he would not have been a bidder on said property for anything like said sum.

Respondent believes and charges that said property has since said sale of October 1st, 1884, largely decreased in value, and was not at the sale of March 17th, 1885, worth near as much as at the sale in October previous, and is not at the time of filing this answer worth anything like said sum.

Respondent denies that he procured the return of said deposit of $10,000 and the order purporting to cancel said bond upon the representation made on his behalf by his counsel at his instance and by his direction; that he had made a *bona fide* bid for said property higher than said Payne and Thompson had undertaken to make, and that he had complied or would comply with the terms of
242 said sale. On the contrary thereof, respondent avers that he had no counsel to appear for him; that if any such representations were made by counsel they were not made by his procurement, consent, or in any manner, directly or indirectly, by him, and he is not bound thereby.

Respondent, however, submits that his bid being made in good faith, and averring that he was at the time and ever since responsible for the amount of his said bid, that he is advised that the acceptance of his said bid by the commissioners was a discharge of said bond, and entitled the said Payne and Thompson to a return of their deposit.

Respondent, further answering, says that he is advised that by reason of the refusal of the court to confirm said sale to him, and decreeing a resale of said property, that he is not liable to take the said property and pay cash for the same at his bid of October, 1884, and that this honorable court ought not to so decree; that said property has been again offered for sale and purchased by Charles H. Shattuck, the purchaser at the first sale, and that the rights of third parties have intervened, entitling them to the property unless said sale should be set aside for some one of the reasons entitling a court of equity to interfere, which reasons respondent respectfully submits do not exist.

Respondent, having fully answered, respectfully submits that the court will not rehear the rule against him, inasmuch as respondent is advised that said rule was improvidently awarded against him before the sale at his bid was confirmed.

243 That this honorable court having a discretion to accept said bid and confirm said sale, or to reject said bid and order a resale of the property, and having by its decree ordered a resale, this respondent was discharged from his offer to purchase said property, and is not further liable in this honorable court upon his said offer to purchase said property.

Respondent therefore submits whether this honorable court can make further order in the premises, as prayed for in said petition, and therefore prays that the prayer of the petitioners be refused, that their said petition be dismissed, and that he go hence with his reasonable costs by him in his defense herein expended; and, as in duty bound, he will ever pray, &c.

J. N. CAMDEN,
By Counsel.

J. B. JACKSON, *Sol.*

STATE OF WEST VIRGINIA, }
Wood County, } *ss:*

Johnson N. Camden, being duly sworn, says upon oath that he is the respondent whose name is signed to the foregoing answer; that he has read the same and knows the contents thereof, and that the matters therein set forth, so far as stated on his own knowledge, are true, and, so far as stated on information derived from others, he believes to be true.

J. N. CAMDEN.

Sworn & subscribed to before me this 30th day of April, 1885.
LUCIUS A. COLE,
Notary Public.

244 On the 5th day of May, 1885, the following "demurrer" of J. N. Camden was filed in the clerk's office, to wit:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL AND OIL LAND CO. *et al.*

Upon a petition filed in said cause by the Toledo National Bank, Benjamin B. Valentine, and Robert S. Blair, also a petition filed by Heman Loomis.

The defendant, J. N. Camden, says that he is advised that there is no matter or thing in said petitions, or either of them, good and sufficient in law to call this defendant to account in this honorable court for the same, but that there is good cause of demurrer thereunto, and he does demur accordingly; and, for causes of demurrer, says that said petitions, in case the same were true, contain no matters of equity whereon this court can ground any decree or give complainants any relief against this defendant.

2nd. The petitioners pray relief against this defendant. It appears from an inspection of said petitions that this defendant is not made a party defendant thereto or required to answer the same or in any manner to appear and make defense thereto, he, the said J. N. Camden, not being a party to the record in said cause.

245 3d. It appears from said petitions that the defendant J. N. Camden was a purchaser of the land sold by the special commissioners to make sale of the same, at a sale thereof made on the first day of October, 1884; that said J. N. Camden did not complete his purchase; that upon a rule issued by this honorable court against the said Camden to show cause why he should not complete his purchase, and upon a hearing thereof the bid of said Camden was not accepted and the sale to him confirmed, by reason whereof the said Camden was discharged from further liability by reason of his said bid and was no longer a party to the record.

4. By his purchase the said J. N. Camden became a *quasi* party to the suit to the extent only that proceedings could be had against him to compel him to complete his purchase; that he did not become a party on the same footing with the other litigants; that his said bid did not make him such *quasi* party until his bid was received and the same confirmed; that the refusal of the court to confine said bid and by directing a resale of said property the said Camden was discharged, and no further proceedings could be had against him in said cause on account of his said bid.

Wherefore, and for divers other errors in said petitions contained and appearing on the face thereof, the defendant demurs thereto and humbly craves the judgment of this honorable court whether he is compellable or ought to make any answer thereto otherwise than as aforesaid.

246 And this defendant humbly prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

J. N. CAMDEN.
J. B. JACKSON, *Sol.* *By Counsel.*

I, J. B. Jackson, of counsel in foregoing-entitled cause, do certify that, in my opinion, the demurrer of J. N. Camden to the petitions of the Toledo National Bank and others filed therein is well founded in point of law.

J. B. JACKSON,
Of Counsel for J. N. Camden.

U. S. CIRCUIT COURT,
CLERK'S OFFICE, DISTRICT OF WEST VA.

Before me, the undersigned, clerk of said court, personally appeared J. N. Camden and made oath that the foregoing demurrer is not interposed for delay.

J. N. CAMDEN.

Taken, sworn to, and subscribed before me this — day of May, 1885.

L. B. DELLICKER, *Clerk.*

247 On the 27th day of April, 1885, the following "answer" to the petition of Heman Loomis was lodged in clerk's office, to wit:

The Answer of Johnson N. Camden to the Petition of Heman Loomis Filed in the Above-Entitled Cause.

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & CO.
vs.
THE WEST VIRGINIA OIL AND OIL LAND COMPANY and Others.

To the honorable the judges of said court:

Respondent, now and at all times hereafter, reserving all manner of benefit and advantage to himself of exception to the many errors and insufficiencies in said petition contained, for answer thereto, or unto so much or such parts thereof as respondent is advised is material for him to make answer unto, answering, says:

Respondent, admits that the allegations of said petition, numbered 1, 2, 3, & 4, so far as they state what appears in the record of said cause, to be true.

As to the allegations Nos. 6, 7, & 8 in said petition contained, respondent adopts his answer to the petition of the Toledo National Bank and others, filed in this cause, so far as the same is responsive to said allegations, as his answer thereto, and denies 248 that his relation to said transactions in the petition of said Loomis charged were other and different than in said answer to the petition of said Toledo National Bank and others stated.

As to the charge numbered 9 in said petition alleged, respondent denies that he procured an order to be entered in said cause on the 3d day of November releasing Thompson and Payne from all liability on their upset bid and for the return of the deposit of $10,000. Respondent avers he was not in attendance upon the court when said order was made, and refers to his answer hereinbefore mentioned, which he makes a part of this answer, as to his connection with said transaction.

Respondent, further answering, says that he is not responsible for the misunderstandings or beliefs of *of* the petitioners. Respondent avers and charges that in making his said bid referred to he never intended to become personally liable to pay the cash the full amount of his said bid, but as before in his answer referred to respondent insists that his bid was made in pursuance of his said contract with the other creditors in said decree of November 17th, 1883, mentioned, and so informed the said commissioners when they called upon him after said sale and requested his compliance with his said bid, and whilst respondent did state, in answer to a question as to what he would do if the court confirmed said sale and refused to give him the benefit of his contract, but should require the 249 cash to be paid, that he would have to pay, yet respondent never expected that such an order would be made, but, relying on his contract, expressly stated to the commissioners that his answer to said question was not to be reported as his assent, in the event the said contract was not received, to pay the amount of his bid in cash.

Respondent, whilst admitting that he was a solvent bidder for the amount of his bid, denies that Thompson and Payne *was* released by him or through his agency, as charged, other than by the legal effect of his bid.

Respondent admits the entering decretal order of Jan. 22, 1885, and the effect thereof, as stated in charge 10 of the petition.

Respondent denies that any such arrangements were entered into as is set out in charge 11 of said petition, but refers to his answers hereinbefore referred to, and relies upon the same as his answer to this charge, so far as said answer is responsive thereto.

Respondent, in answer to charge 12 of said petition, denies that when he made said bid of $173,050, on Oct. 1st, 1884, he intended and believed he was making himself personally liable therefor, and that he so stated in effect to the commissioners of sale, when they demanded a compliance with the terms of sale; on the contrary thereof, as respondent has repeatedly stated, he now insists that, had he believed that the effect of his bid was to render him personally liable to pay the amount thereof in cash, he would not have offered said bid, but that said bid was offered in pursuance of said con- 250 tract with the expectation that the creditors would be required to comply with the same, as he intended to do, and that his personal liability only extended to the covenants and agreements therein contained, and that his statements to said commissioners *was* to this effect in his answer to charge 10 herein.

Respondent admits that he is a member of the U. S. Senate, and respectfully submits that his interests are not to be prejudiced by reason thereof, as respondent cannot understand why such an allegation is made in the petition except for some such purpose.

Respondent again denies that he procured the entering of the decree of November 3d, 1884, and also denies that he is estopped to deny his personal liability.

Respondent, having fully answered the said petition, respectfully insists that he is not further liable as a bidder on said property by reason of the fact that his bid was not accepted by a confirmation of said sale, and that he was discharged when the resale was ordered by the decree of Jan'y 22d, 1885. Respondent therefore insists that no decree can be entered against him as prayed for in said petition; nor is the petitioner entitled, as respondent is advised, to the relief as prayed for by him as against the respondent.

Respondent therefore prays that the said petition be dismissed, and that respondent be decreed his costs by him about his defence here expended.

J. N. CAMDEN,
By Counsel.

J. B. JACKSON, *Sol.*

251, 252 STATE OF WEST VIRGINIA,
Wood County, } *ss:*

Johnson N. Camden, being duly sworn, says upon oath that he is the respondent whose name is signed to the foregoing answer; that he has read the same and knows the contents thereof, and that the matters therein set forth so far as stated on his own knowledge are true, and so far as stated upon information derived from others he believes to be true.

J. N. CAMDEN.

Sworn and subscribed to before me this 30th day of April, 1885.

LUCIUS A. COLE,
Notary Public.

253 Depositions taken on behalf of Heman Loomis and filed in the clerk's office on the 9th day of May, 1885, are in words and figures as follows, to wit:

Depositions taken before me, Barna Powell, a commissioner of the circuit court of the United States for the district of West Va., pursuant to the annexed notice, to be read in evidence in behalf of *the* Heman Loomis upon a petition filed by him in the chancery cause of F. L. B. Mayhew & Co. against The West Va. Oil & Oil Land Company & others pending in said court.

May 1st, 1885.—At the office of the clerk of the circuit court of the U. S. for the district of West Va., in the court-house and P. O. building, Parkersburgh, W. Va., the taking of depositions is commenced.

Present: B. M. Ambler, counsel for Heman Loomis.
" J. B. Jackson, Esq., counsel for J. N. Camden.

Thereupon W. L. Cole, a witness in behalf of Heman Loomis, being by me duly examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

By B. M. AMBLER, Esq.:

Ques. 1. What relation do you bear to the court and parties in this cause?

Ans. I am a member of the bar of this court; I was one of the commissioners appointed by the court to make sale of the property in this cause; I am one of counsel who instituted this suit, 254 and have been counsel of record in the cause for James H. Carrington, A. C. Worth, Wm. H. Beach, the Toledo Nat. Bank, Benj. B. Valentine, and R. S. Blair; I reside at Parkersburgh, W. Va.

Ques. 2. Please state what occurred between you and Mr. J. N. Camden on the 1st of October, 1884, in reference to the sale made by you and your cocommissioner that day.

Ans. I first saw Mr. Camden at the sale, which commenced soon after 2 o'clock p. m. of that day; he offered a bid for the property of $173,050. The auctioneer employed by my cocommissioner and myself continued to cry his bid for some time, and, no other bid being offered, the auctioneer by our direction knocked the property down to Mr. Camden at his bid, $173,050.

Mr. Camden went with Gov. Jackson and myself immediately after the sale was closed to his (Camden's) office, which was about a square away, to receive the cash, as I supposed, in compliance with his bid. Mr. Camden presented to us then the copy of a contract and a notice attached thereto, which copy and notice are filed with our report of the sale made in said cause, and said to us that he desired to tender that contract, the original of which he would procure if we desired, in compliance with the purchase made by him.

After some consultation and discussion of the matter between us, in which Mr. Camden participated, we answered him that, under the terms of the decree by virtue of which we made said sale, we could not accept the contract as a compliance with the terms of sale—that we could accept nothing but cash.

Mr. Camden then requested us to make a report to the court 255 of the fact that he had tendered that contract, so that the question as to his right to purchase the property under said contract might be passed upon by the court.

He also said that if it should be decided that he had not the right to purchase the property under said contract he expected to pay the cash, according to the terms of the decree, but he requested that this latter fact be not mentioned by us in our report, viz., the payment of the cash instead of the contract, as he wanted the question of his liability under said contract first disposed of by the court.

Considerable time was consumed in the discussion of this matter—I presume from half an hour to an hour—and I do not in this statement undertake to give the conversation as it occurred, but have stated the substance of it as accurately as I can do so.

Ques. 3. State whether Mr. Camden made the statements narrated by you above in response to a demand on the part of the commissioners for settlement with them under his bid, or how the conversation came about.

Ans. I can't say the statement so made by him was in response to a demand, technically speaking. We were there at his office, at his request, for the purpose of closing up the sale and receiving pay from him, and his statements made to us were made in the course of the discussion of his right to tender and our right to receive said contract in compliance with the terms of sale.

Ques. 4. Are you willing so to amend your report as to show that Mr. Camden intended to pay cash in discharge of his liability as a bidder, provided the court would not receive the contract tendered by him?

256 —. The report having been filed I think that I would — no right, even with the concurrence of the other commissioner, to make any change in it, except by leave of the court, but have no objection to stating the facts above stated at any time or in any manner when called upon to do so.

B. M. Ambler, counsel, objects to witness' opinion.

Ques. 5. Will you amend your report or file an amended report setting up the above facts.

Ans. Not unless leave of the court be first obtained.

Ques. 6. What notice did you have of the proceedings to vacate the bond of Thompson and Payne appearing in the order of November 3, 1884?

Ans. None.

Ques. 7. What counsel besides you representing Carrington, the Toledo Nat. Bank, and others was in this vicinity on that day?

Ans. The parties above mentioned by me as my clients in this case had no other counsel than myself in this State at that time. My brother, C. C. Cole, is the only other counsel for said parties; he resides in Washington, D. C., and was not here at the time said order was made.

Ques. 8. What was your first intimation of that proceeding?

Ans. It was about a week after the order appears to have been made before I heard it. I first heard a rumor on the street that the deposit of $10,000 had been withdrawn. I cannot at this moment recall who it was that mentioned it. I very soon afterwards examined the record and found the order.

257 Ques. 9. In what part of your report did you make it appear, as recited in the order, that J. N. Camden had complied with the terms of sale?

Ans. It does not appear in the report and, I think, it is not recited so in the order.

Ques. 10. In what part of your report does it show that Thompson and Payne complied with their bond?

Ans. I think no mention of Thompson and Payne is in the report.

Ques. 11. Were you in court on Nov. 3, 1884?

Ans. I was in the office of the judge of this court in the forenoon of that day. If the judge was on the bench during the day, in the court-room, I was not aware of it; all the business I done in court on that day was in the judge's office.

Ques. 12. What counsel in this case was before the judge, and for what purpose?

Ans. There had been an effort made to have the hearing of this case upon questions arising upon the report of sale on the 3d day of November, 1884, and information had been received here that Judge Bond would not be present on that day, and that some other day would have to be fixed for hearing. The several parties in interest or persons representing them came up to the judge's office in the forenoon of that day, Nov. 3, '84, to agree upon a day for hearing.

There were present, as well as I can recollect, Mr. Ambler, counsel for Heman Loomis, Mr. Boreman, counsel for Avery & others, Mr. J. N. Camden, and Caleb Boggess, his counsel, and myself representing the parties hereinbefore named, and, after discussing the matter, the district judge announced that the case would be
258 set for hearing on December 2 following, and I thereupon wrote the order, which was signed by — judge, and parties left the court-house, after which I have no knowledge of anything transpiring in court that day. There was an election held for President and Vice-President of the United States held the next day, Nov. 4, 1884.

Cross-examination by J. B. Jackson, counsel for J. N. Camden:

Ques. 13. Were you of counsel in this case before and at the time of the entering of the decree of the 17th of November, 1883?

Ans. I was.

Ques. 14. At that time what parties of record did you represent?

Ans. The same parties named in my answer to the first question in my examination-in-chief.

Ques. 15. What attorney was associated with you representing said parties, if any?

Ans. My brother, C. C. Cole.

Ques. 16. Have you ever read the agreement of date of Nov. 17, 1883, between J. N. Camden, J. H. Carrington, and others, and were you and your brother present at the making of said contract, and did you assent thereto on behalf of any of the parties that you represented?

Ans. I have read the agreement which I understand to be referred to, but the day of the date thereof was blank the last time I saw the original; my brother was not present at the time said contract was written or signed by any of the parties.

The terms of the agreement were fixed by counsel in the absence of the parties who signed it, except Camden and Carrington,
259 and was sent by mail to other parties to sign—that is, to all who did sign it.

As counsel for the several parties represented by me, I assented to the agreement, stating at the same time that I had no authority to execute it for them, but I believed they would all execute it. My brother was not present at the time and did not know until informed by me of the terms of said agreement.

Question and answer objected to by counsel for Heman Loomis as not a proper subject of conversation and not called for or warranted by direct examination.

Ques. 17. In whose handwriting is the contract referred to?

Ans. Mine.

Ques. 18. Who of counsel of the parties thereto and who of the individuals were present at the making of the contract?

Ans. J. N. Camden, J. H. Carrington were present in person, B. M. Ambler, attorney for Heman Loomis, and myself, counsel for several parties aforesaid.

Ques. 19. How long was the subject-matter of the contract under consideration before the terms thereof were agreed to?

Ans. We were engaged in negotiating in relation to an adjustment of various interests, which finally culminated in the paper mentioned, for two or three weeks and maybe longer.

260 Ques. 20. Was this contract completed and signed before the decree of the 17 of November, 1883, or afterwards?

A. It never was completed and signed; as I understand it, it was signed by some of the parties whose names appear thereto before the decree was made—maybe by all.

Ques. 21. As to which of the parties named in the agreement was it not executed or assented to?

Ans. The Toledo Nat. Bank and W. H. Beach.

Ques. 22. At the time the property was first offered for sale by the commissioners under the decree of the court, did you not have in your hands or possession a paper executed by Beach fully ratifying and confirming this contract?

Ans. I had a copy of the agreement signed by him and assignment of his claims signed by him to Johnson N. Camden, to be used at that time, if necessary, in carrying out the provisions of said agreement, and after the sale Mr. Camden, having refused to bid for the property under the agreement, by request of said Beach, I returned the papers to him.

Ques. 23. At the same time was there not a Mr. Young present, representing the Toledo Nat. Bank, having in his possession a paper authorizing him to sign said contract for said bank, and did you see such authority; and, if so, why did said Young not sign said contract for said bank?

Ans. Mr. Young, president of the Toledo Nat. Bank, was present, representing his bank, at the time mentioned; he had also been here 30 days prior to that time, when the sale was advertised to have taken place.

261 I do not know whether he had any paper from said bank authorizing him to sign said agreement. On the first day that he was here he was informed of a proceeding which had been instituted in this court seeking to review the decree of Nov. 17th, 1883, as to the amounts decreed to him and Loomis, and that doubts were entertained by the parties whether, under the then existing circumstances, the said contract, if executed, could be carried into effect. He returned home without signing the contract or indicating whether he would sign it for the bank.

He was here again on the day of the first sale, and was then informed that Mr. Camden would not bid for the property under the said contract, and after the sale was made to Shattuck for $163,000 he returned home without signing the contract or showing me any authority for doing so, if he had any.

Ques. 24. In the negotiations in relation to said contract with Camden, Carrington, and Ambler, as attorney-in-fact for Loomis, and after the terms of the contract were agreed to, did you not represent to them that you, as attorney for the Toledo Bank and Beach, had authority to agree to said contract for them, and would be responsible for them ratifying your act?

Ans. I did not. I had no such authority from them. I had not consulted either of them in relation to such contract. I did not profess to exercise such authority, but I did state to the parties that I had no doubt that my said clients, upon my recommendation, would agree to the contract, and that I had no doubt I would secure their approval of it, and I would, I believe, have secured their approval of it but for the facts hereinbefore stated by me.

262 Ques. 25. Were not the stipulations in the said contract entered into preliminary to the consent of the lien creditors to entering a decree for the sale of said property?

Ans. It was prior to the entering of the decree.

Ques. 26. Would the other lien creditors have consented to the decree of the 17th of Nov., '83, had it not been understood that the Toledo bank and Beach would sign this contract, and did not some of them so say?

Ans. I do not know. None of them said so to me nor in my hearing.

Ques. 27. Was not the decree of the 17th of Nov., '83, a consent decree, in which all the creditors of the defendant Co. assented thereto?

Ans. It was in part a consent decree, not fully so. The priorities of creditors and the amounts to which each was entitled had been settled in the case long prior to the decree by the master's report and pleadings, except as to the amount due to Heman Loomis and the order of his priority; that was fixed by consent—that is, the first amount due Loomis and the order of priority was fixed by agreement—by a stipulation in writing—antecedent to the entry of the decree or the making of the contract for the purchase of the property.

It was by consent of the parties, also, as recited upon the face of the decree, that Richard A. Storrs was to be paid in full the amount due him.

I will state right here that I made a mistake in giving the names of my clients in the suit in omitting the name of Richard A. Storrs.

Ques. 28. Did not the consent of the parties to said decree, as stated by you, result from the contract first referred to?

263 Ans. I can only answer as to the parties whom I represented as counsel. I think they would have opposed the making of the decree at that time, except for their belief that said contract would be executed and performed in good faith.

Ques. 29. Was not the said contract in part executed by Storrs receiving the full amount of his claim, when, by the terms of the decree, he was first in priority with Wm. D. Thompson, the debt represented by Camden, and should only be paid *pro ratio?*

Ans. No; Mr. Storrs was not a party to the contract and had nothing to do with it.

Ques. 30. In the negotiations did not Mr. Carrington say that he, Carrington, would not sign the contract unless Storrs should be first paid or provided for; and was not Storrs paid so as to procure Carrington's assent to the contract?

Ans. No, not at all.

Ques. 31. What did Carrington say, if anything, in relation to Storrs' indebt- *or* provided for?

Ans. He said that he had seen Mr. Storrs in New York, and Mr. Storrs was unwilling to consent to a sale of the property at all, he being a large holder of the stock of the Co.; and I was also advised to the same effect by Mr. Storrs; and it was agreed by the other parties that would be affected thereby that he should be paid the amount of his claim in full out of money in the hands of the receiver.

Ques. 32. Did not Storrs make a further demand that he should be indemnified for loss on his stock, and that in pursuance of this demand did he not obtain from Heman Loomis an assignment for $5,340 of his claim in this cause, which assignment he still holds?

264 Ans. Storrs was then, as he always had been, opposed to a sale of this property, for the reason that he was a large stockholder and held other stock as collateral security for a debt due him by B. S. Compton.

He owned $40,000 stock and held $25,000 stock as collateral for a debt of about $10,000 which Compton owed him. He was willing to sell his stock and transfer his stock and note, for which the stock was held as collateral, for the sum of $5,340 cash, but finally accepted the offer of Heman Loomis of $5,340 therefor, to be secured by an assignment of so much of said Loomis' claim in this cause, and the assignment was made and the stock and note transferred to Loomis; after which Mr. Storrs had no interest in opposing the decree, and thereupon by his authority I consented to the decree.

A few days thereafter he was paid the full amount of his claim, as mentioned in the decree, out of the money in the hands of the receiver.

Ques. 33. Did either Beach or the Toledo Bank decline to consider themselves bound by that contract, when informed of its provisions, in Nov., '83?

Ans. Beach did not; the bank at first declined to sign the paper, but advised me that Mr. Young would come here on the day of sale with authority to sign it if after a personal consultation he thought it proper.

Ques 36. Why was the paper not presented to the bank and to Beach when the same was executed by the other parties?

Ans. There was not time to send it to all the parties.

Ques. 37. Was it not thought best not to trust it in the mails for fear it might be mislaid, and did you not undertake to procure their assent thereto?

265 Ans. I don't think there was any objection to trusting it to the mail; I think it was sent to New York—I believe by mail—to some of the parties, after it was signed by Camden & Loomis, and was returned here by mail, after being signed by Carrington, Worth, and Valentine, and I think it was while this paper was in transmission to New York and return that I sent a copy to Beach and got his signature and corresponded with the bank with the result above stated.

Ques. 38. Was not the contract given to Carrington to take to New York, or afterwards sent to him to be ratified and signed by him, Valentine, and other New York parties, and did not C. C. Cole, your associate counsel, telegraph you that the contract was fully executed, and that upon such representation by you as counsel the decree of Nov. 17, 1883, was consented to by the other parties in interest and agreed to be entered as the decree of the court?

Ans. No; what did occur was this: Mr. Carrington was here when the paper was drawn, but he did not sign it here, and the other parties in New York had not been consulted fully as to the contract. It was arranged with Mr. Carrington that the paper, after being signed by Camden & Loomis, should be sent to him at New York, that he would sign it and get Valentine and Worth to sign it, and when it was signed by them that he would so telegraph me and return the paper by mail, which he did.

I don't know that my brother knew anything about making the contract. I received no telegram from him of the import
266 stated in the question and made no such representation to the parties.

My recollection is that the district judge was about to adjourn this court for the term and was going away to be gone a considerable time, and this was the reason for arranging with Carrington to telegraph from New York instead of waiting for the return of the papers by mail. Upon receipt of the telegram from Carrington I consented to the decree.

Ques. 39. Did not Carrington, at the time of the execution of the contract, claim to control the Toledo bank debt also?

Ans. No, sir; the fact was stated as to his interest in that claim. He is surety to the bank for the payment of that claim, and had assigned to the bank an equal amount of his judgment in this cause as security therefor.

Ques. 40. Was the Toledo Nat. Bank, Valentine, and Blair parties to this record before the decree of Nov. 17, '83?

Ans. I think not; the record will show.

Ques. 41. Was it not a part of the understanding and agreement under said contract that the other creditors should assent to their filing their petitions, and would consent that they should participate in the proceeds of the sale of the property, which consent was carried into effect in the decree of November 17, '83?

Ans. There was no other or different understanding or agreement between the said parties than the contract in writing.

Ques. 42. As a further consideration of the entering into said contract, was it not understood that certain suits then pending
267 in Michigan against Storrs & Carrington should be dismissed when said contract should be signed or before, and were not said suits dismissed?

Ans. No. There was an action of Storrs against Compton, and another action of Compton against Storrs, pending at Monroe, Michigan, in relation to the notes which Storrs held against Compton and the stock which Compton had assigned to Storrs as collateral security, which I have referred to before.

When Compton sold his stock and notes to Loomis it was stipulated been Loomis & Storrs that Loomis would procure the action of Compton against Storrs to be dismissed. I believe it was understood that both actions were to be dismissed, both involving the same matters.

This matter had nothing whatever to do with the said contract.

There was a suit of Loomis against Carrington, and it was agreed between Loomis and Carrington that upon the making of this decree that suit should be dismissed, and I am informed it was done.

Counsel of Loomis objects to the entire cross-examination of the witness Cole as being not a proper subject of examination, unless the defendant Camden intends to rely on Mr. W. L. Cole as his witness.

268 Re-examined by B. M. AMBLER, Esq., counsel for H. Loomis:

Ques. 43. In the interview of Oct. 1, '84, between the commissioners and Mr. Camden, did he say anything about the time the court would likely allow him for paying the $173,050 in cash money in case the court refused to recognize the paper tendered?

A. I think he did ask Gov. Jackson at that time if a day would not be allowed him to pay the money if the contract was not accepted, and Jackson replied that he thought the court would give him a reasonable time in which to pay the money.

W. L. COLE.

JACOB B. JACKSON, a witness in behalf of Heman Loomis, being by me examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

By B. M. AMBLER, Esq.:

Ques. 43. Please state whether you are cocommissioner of Wm. L. Cole, who has testified above.

Ans. I was and am.

Ques. 44. Please state what occurred after the sale of Oct. 1, '84, between yourself, Mr. Cole, and J. N. Camden, in regard to Mr. Camden's bid on the property.

Ans. After the property was knocked down at Mr. Camden's bid of $173.050, Mr. Cole and I walked with Mr. Camden to his office for the purpose of having him comply with the terms of sale by paying to us the amount of his bid. Upon our arrival Mr. Camden stated that he bid in pursuance of a contract, which he then exhibited and tendered in discharge of his bid.

269 Mr. Cole and myself consulted as to what we should do in the premises, and as the result of our consultation Mr. Cole informed Mr. Camden that the decree of the court required the property to be sold for cash, and acting under the decree we had no authority to accept anything else but the cash in discharge of his bid.

Mr. Camden replied that he relied upon this contract in discharge of his purchase, and desired that the court should pass upon it, as in addition to the contract itself he had received a written notice from Heman Loomis, one of the parties to the contract requiring him to bid thereunder, which notice he also exhibited with the contract. Either Mr. Cole or myself informed Mr. Camden that we had no option in the premises; that he must comply with the terms of sale, and, unless he did so, we should be compelled to so report to the court.

Camden then asked if we could not report the contract and his offer to comply therewith; thereupon he was informed that we could report his tender of the contract in discharge of the bid, our refusal to accept the same, and his refusal to pay the money in cash, and the court, being in possession of all the facts, could make such an order as was proper in the premises; he then gave a copy of the contract, with Loomis' notice appended thereto, to Mr. Cole, my cocommissioner, and requested us so to report.

Before I left the room my recollection is that I asked Mr. Camden what he intended to do if the court refused to confirm his contract. He replied: "I want the court's opinion on the contract.
270 I will pay the cash if I have to," or words to that effect. This, to my recollection, is about the substance of what occurred. I don't pretend to give the exact language.

Ques. 45. Did or did not Mr. Camden then caution the commissioners not to say anything about his paying money in discharge of his liability, in their report?

Ans. He may have done so; my recollection is not distinct on that point.

Ques. 46. Did he not subsequently and before the report was filed request you not to mention in the report his intention or expectation of paying cash, if the contract was not accepted, or words to that effect?

Ans. I had no further conversation with Mr. Camden in relation to his bid. After I returned to Wheeling I received a telegram from him, in which he stated to me to be sure not to report the sale in any other manner except under the contract; that is my recollection. I have the telegram and can produce it.

Ques. 47. Will you hand it to the commissioner, to be filed by the commissioner as Exhibit No. 1 with your deposition?

Ans. I will, with the envelope in which it was received.

Ques. 48. Do you remember Mr. Camden's asking you on October 17, '84, or at any time subsequent, how long the court would allow him to pay cash, if the contract was rejected; and, if so, what he said about it?

Ans. I have no recollection of Mr. Camden asking me that question. I have an indistinct recollection of Mr. Cole and I discussing that point after we left Camden's office.

271 Ques. 49. What official position did you hold in West Va. last fall?

Ans. I was Governor.

J. B. JACKSON.

By consent and agreement the taking of further depositions in this cause is continued until May 4, 1885, at the office of Barna Powell, on third street, in the city of Parkersburgh, West Va., instead of the office of the clerk of the U. S. circuit court, as recited in the notice under which these depositions were commenced.

BARNA POWELL, *Com'r.*

THE UNITED STATES OF AMERICA, }
District of West Virginia, } *ss:*

I, Barna Powell, a commissioner of the circuit court of the United States for the district of West Virginia, duly appointed and qualified by said court, do hereby certify that the foregoing depositions of W. L. Cole and J. B. Jackson were duly taken by me pursuant to the annexed notice, at the time and place and within the hours in the annexed notice specified.

Given under my hand this 4th day of May, 1885.

BARNA POWELL,
Commissioner U. S. Circuit, Dist. of W. Va.

272 *Costs of These Depositions.*

Commissioner's costs:

Issueing 2 sp'ns	50
Writing depositions, 68 fo's @ 20	13 60
Filing 3 papers	30
Swearing 2 witnesses	20
Total com'r's costs	$14 60

Charged to Van Winkle & Ambler, att'ys.

John Hogan, serving 2 notices	$4 00
" " " 2 sp'ns	1 00
Total	$5 00

BARNA POWELL, *Com'r.*

Exhibit No. 1, filed with the deposition of J. B. Jackson, to wit:

PARKERSBURGH, W. VA., *Oct.* 2, '84.

Gov. J. B. Jackson:

Please see that my bid is reported as based solely on the contract presented in payment, without any other qualifications or conditions that would affect me personally or my bid.

J. N. CAMDEN.

273 Depositions taken on behalf of the Toledo Nat. Bank & others and filed in the clerk's office on the 9th day of May, 1885, are in words and figures as follows, to wit:

Depositions of sundry witnesses taken before me, a commissioner of the U. S. circuit court for the district of West Virginia, to be read in evidence in behalf of the Toledo Nat. Bank and others, petitioners, in the suit of F. L. B. Mayhew & Co. against the West Virginia Oil & Oil Land Company and others, pending in said court.

Said depositions are taken in pursuance of a notice attached hereto, at the office of the clerk of the court aforesaid, and commenced on the day therein named for that purpose, to wit, April 28, 1885.

W. L. Cole, Esq., appeared for Toledo Nat. Bank, Benj. B. Valentine, and R. S. Blair, Esq.

J. B. Jackson, Esq., appeared for J. N. Camden.

A. K. Leonard, a witness for the petitioners, being by me duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

By W. L. Cole, Esq.:

Ques. 1. Where do you reside and what is your occupation?

Ans. I am an auctioner, and reside in Parkersburgh, W. Va.

Ques. 2. State whether you acted as the auctioneer in making sale of the real estate and property decreed to be sold in the suit of F. L. B. Mayhew & Co. against The West Va. Oil & Oil Land Co., in the U. S. circuit court for the district of West Va.? If so, 274 state by whom you were employed and how many times the property has been exposed for sale under the decree in that case.

Ans. I was; I was employed by W. L. Cole and J. B. Jackson, special commissioners; it has been sold three times and exposed five times for sale; I have cried all the sales.

Ques. 3. How long have you been an *an* auctioneer in Parkersburgh, W. Va.?

Ans. I have been an auctioneer 29 years; in Parkersburgh, 25 years.

Ques. 4. At the second sale of said property, which is reported as having been made on the 1st day of October, 1884, state how many bids were offered for said property, and by whom.

Ans. Mr. J. N. Camden came to me just before offering the property and asked me if I was going to make the sale; I told him yes; he then told me to start the property at Payne and Thompson's bid, or Thompson & Payne's bid, of $173,000. After crying that bid for some time, Mr. Camden bid $50 more, and, after crying his bid for some time, by direction of the commissioners the property was knocked down to J. N. Camden, being the highest bidder, at $173,050.

Ques. 5. Did you announce at the time of crying the bid of $173,000 whose bid it was?

Ans. My impression is that I did.

Ques. 6. Do you know Oliver H. Payne and W. P. Thompson?

Ans. I don't know Payne, but know Thompson—he used to live here.

Ques. 7. Was either of them present Oct. 1, 1884, at the sale?

Ans. Not to my knowledge; W. P. Thompson, I think, was
275 present at the first sale, when the property was sold to Shattuck for $163,000.

Ques. 8. Was Mr. Camden present at the first sale of the property; if so, did he or W. P. Thompson bid on the property at that time?

Ans. Camden and Thompson were present during a part of the time while the sale was being cried, but neither one made a bid on the property, as I remember.

Ques. 9. When the property was knocked down to Camden, Oct. 1, 1884, at his bid, $173,050, did he say anything before, at the time, or after the property was knocked down to him, as to whom he was bidding for?

Ans. Not in my presence.

A. K. LEONARD.

L. B. DELLICKER, a witness for the petitioners, being duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

By W. L. COLE, Esq.:

Ques. 10. What is your occupation and where do you reside?

Ans. I am clerk of the U. S. circuit court for the dist. of West Va., and reside at Parkersburgh, West Va.

Ques. 11. Were you present in the U. S. circuit court during the present term, commencing January 10, 1885, while the questions arising upon the sale of the property in this cause made to J. N. Camden on the 1st day of October, 1884, were being argued before the court? If so, please state who appeared as counsel for the purchaser, J. N. Camden, at that time?

Ans. I was present at the time named, and according to my recollection Caleb Boggess, Esq., appeared as attorney for J. N. Camden.

276 Ques. 11½. State who appeared as counsel for Oliver H. Payne and W. P. Thompson on the 3d day of November, 1884, and moved the court to make the order that was made on that day to release them and their surety, W. N. Chancellor, from the obligation of their bond in the penalty of $250,000, which was filed in this cause, as one of the conditions of setting aside the sale of the property to C. H. Shattuck for $163,000?

Ans. The same counsel who appeared for J. N. Camden, Caleb Boggess, Esq. I was present when the motion was made; the original of the order was in the handwriting of Mr. Boggess. I have made search for the original draft of the order, but it is mislaid, and I have not yet found it, although I have made search for it.

Ques. 12. Who was present at the time this motion was made by Mr. Boggess—of parties interested in this cause or of counsel?

Ans. No one, I think.

Ques. 13. At about what hour of the day was the order made upon the motion aforesaid?

Ans. I think just after the noon recess—about 3 o'clock p. m.

Ques. 14. Was the motion made in open court or to the judge in his office?

Ans. Court was open. I think the motion was made to the judge in the clerk's office.

The original draft of the order drawn by Mr. Boggess the judge refused to sign until modified and rewritten, which was done in my office. I don't know what the modification consisted of.

Ques. 15. To whom was the $10,000 mentioned in the said order of November 3d, 1884, paid by you?

277 Ans. I paid the $10,000 to L. A. Cole. I have a receipt for it signed by "Camden Consolidated Oil Co., by L. A. Cole, s'c'y." I am not certain, but think my check was payable to the "Camden Consolidated Oil Co." and was for $10,098.89, including interest.

Ques. 16. What office did L. A. Cole hold at that time in the Camden Consolidated Oil Co.?

Ans. I don't know, except as it appears in the signature of the receipt. The whole transaction relating to the $10,000 was through L. A. Cole; he paid me the money and drew it back again, and the check paid me was that of the Camden Consolidated Oil Company. He also handed me the bond of Thompson and Payne, with Chancellor as surety, for $250,000.

Ques. 17. How long have you known L. A. Cole?

Ans. I should say 8 to 10 years; ever since he came here; I think 10 years.

Ques. 18. What business has he been engaged in for the last 6 or 7 years?

Ans. He seems to have been the general business agent and manager of the Camden Consolidated Oil Co. here in Parkersburgh.

Ques. 19. Do you know the Thompson and Payne mentioned in that order of Nov. 3d, 1884?

Ans. I know W. P. Thompson well and have a slight acquaintance with O. H. Payne.

Ques. 20. Was any part of the transaction of giving the bond, paying of the $10,000 into court, the application to loan the same out, and the final withdrawal of the same from the registry attended to by the said Thompson and Payne or either of them?

Ans. It was not in person.

278 Ques. 21. Did you get any voucher from them for the $10,098.89 paid over to the Camden Consolidated Oil Co.?

Ans. I did get a receipt signed by them personally. I insisted that I must have a receipt from them for the money, and, while I paid Cole the money, as stated above, and took the receipt I refer to from him, I prepared another receipt for the signature of Thompson and Payne and handed it to Mr. Cole, who subsequently returned it to me with the names of Wm. P. Thompson and Oliver H. Payne signed to it.

Ques. 22. How long was it after the order of Nov. 3, 1884, was made before L. A. Cole called for the money?

Ans. It was the next day—Nov. 4, 1884.

Ques. 23. Was said L. A. Cole, J. N. Camden, or any officer of the Camden Consolidated Oil Co. present when the said order of Nov. 3, 1884, was applied for and made?

Ans. I think not.

Ques. 24. Did you notify them that it was made?

Ans. I don't remember that I did.

L. B. DELLICKER.

Upon motion of counsel for petitioners, and it appearing that J. N. Camden and W. N. Chancellor have not been personally served with notice of the taking of these depositions, the further taking of these depositions is adjourned until April 30, 1885, at the same place and between the hours named in the annexed notice.

BARNA POWELL,
U. S. Commissioners.

279 April 30, 1885.

Pursuant to the above adjournment the taking of these depositions is resumed.

Present: W. L. Cole, Esq., counsel for petitioners.
" J. B. Jackson, Esq., " J. N. Camden.

A. K. Leonard, who was heretofore examined, was recalled for the purpose of cross-examination.

By J. B. Jackson, Esq.:

Ques. 25. You say in answer to Ques. 4, direct examination: "He (Camden) then told me to start the property at Payne & Thompson's bid or Thompson & Payne's bid of $173,000." Did he not tell you that he was authorized by Thompson & Payne to start the property for them at their bid of $173,000, and that he offered that bid for them?

Ans. Well, that is the way I understood it then and the way I understood it when I answered in response to Ques. 4, but I am not sure which way he put the names, Payne & Thompson or Thompson & Payne, or Cleveland parties; which ever way it was the bid was made for them and not for himself—as I understood it.

A. K. LEONARD.

280 L. A. Cole, a witness for the petitioners, being by me duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

By W. L. Cole, Esq., petitioners' counsel:

Ques. 26. Please state what position you hold with the Camden Consolidated Oil Company.

Ans. I am secretary of that company, and have been for 4 or 5 years.

Ques. 27. Who is president of the company?

Ans. J. N. Camden, and has been since its incorporation in 1875.

Ques. 28. Have you been connected with the company ever since its incorporation?

Ans. Yes.

Ques. 29. Where does that company have its principal office, and what is its business?

Ans. Parkersburgh, W. Va.; manufacture of petroleum oils, involving the purchase and sale of the same.

Ques. 80. How many refineries are owned and controlled by said company, and where located?

Ans. Two; one in Parkersburgh and one in Baltimore.

Ques. 31. Was Wm. P. Thompson, now of Cleveland, formerly an officer of the Camden Consolidated Oil Co.; if so, how long was he connected with that company?

Ans. He was; about 10 years.

Ques. 32. Has he ever severed his connection with the Co.?

Ans. No.

Ques. 33. Is the said Thompson also an officer of the Standard Oil Co.?

Ans. I understand he is.

281 Ques. 34. What office does he hold in the Standard Oil Co.?

Ans. Vice-president.

Ques. 35. Is he related to J. N. Camden by marriage or otherwise?

Ans. J. N. Camden married his sister.

Ques. 36. Do you know Oliver H. Payne, of Cleveland?

Ans. I do.

Ques. 37. Is he connected with the Standard Oil Co. as officer, stockholder, or otherwise?

Ans. I do not know.

Ques. 39. What business is the Standard Oil Co. engaged in?

Question objected to as irrelevant; and further, the Standard Oil Co. being a corporation its charter is the best evidence of the nature of its business.

Ans. I understand it to be engaged in the purchase, manufacture, and sale of petroleum oil.

Ques. 40. Does the Camden Consolidated Oil Co. have large business transactions with the Standard Oil Co.?

Ans. It has some, but not very large.

Ques. 41. Is the Camden Consolidated Oil Co. the principal purchaser of oils produced from the oil fields of West Va.?

Ans. To the best of my knowledge it is.

Ques. 42. Has that Co. furnished the Baltimore & Ohio Railroad Co. with its lubricating oils for several years past?

Ans. No; not for 5 years.

Ques. 43. Who has furnished that Co. with its lubricating oils during the last 5 years?

Question objected to as irrelevant.

Ans. I think the S. P. Wells Oil Co.

Ques. 44. Was the oil furnished to the S. P. Wells Oil Co. by or through the Camden Consolidated Oil Co.?

282 Ans. The Camden Con. Oil Co. sells the S. P. Wells Oil Co. some crude oil.

Ques. 45. Does it not sell to the S. P. Wells Oil Co. all or a principal part of the oil which the S. P. Wells Oil Co. sells to the Baltimore & Ohio R. R. Co.?

Ans. It does not sell all nor any part of the oil sold the railroad Co. by the S. P. Wells Oil Co.

Ques. 46. What disposition does the Camden Con. Oil Co. make of its lubricating oils produced in West Va.?

Objected to as irre*vel*ant and as calling for information in relation to the business of this company not warranted by any pleading in the cause.

Ans. It sells them to various customers.

Ques. 47. Is not the S. P. Wells Oil Co. one of the largest purchasers of that kind of oil?

Ans. No.

Ques. 48. What proportion of the stock of the S. P. Wells Oil Co. is owned or controlled by the Camden Con. Oil Co. or the officers and agents thereof?

Ans. None of it is owned by the Camden Con. Oil Co. I own $500 of its stock. I do not know what is owned by any other officer.

Ques. 49. Is J. N. Camden the owner of any stock in the S. P. Wells Oil Co.?

Ans. I don't know.

Ques. 50. Was W. P. Thompson present at the first sale of the property in controversy in this cause when it was bid in by C. H. Shattuck at $163,000?

Ans. I do not know.

Ques. 51. Were you present at said sale?

Ans. I was not in the city at the time.

283 Ques. 52. Were you present in court in June 1884, when Wm. P. Thompson and Oliver H. Payne offered the "upset bid" for the property in controversy in this suit?

Ans. I was.

Ques. 53. Were they present in court; if not, by whom was that "upset bid" offered?

Ans. They were not present in court. A telegram was addressed to the clerk of the court, L. B. Dellicker, and a duplicate was, at the same time, received by me stating that they had addressed such a telegram to L. B. Dellicker, and that I was authorized to confirm it. The telegrams were signed by W. P. Thompson and O. H. Payne.

I then instructed Col. Chas. Marshal to make the offer or bid in open court.

Ques. 54. Was Chas. Marshal counsel for said Payne & Thompson?

Ans. He was.

Ques. 55. Where does said Marshal live, and at whose request did he come here to attend the court at that time?

Ans. He lives in Baltimore. I do not know at whose request he came here at that time.

Ques. 56. Who paid said Marshal his fee and expenses for attending said court, in this cause, at that time?

Ans. I did, for Thompson and Payne.

Ques. 56. Was he paid by the check of the Camden Con. Oil Co.?

Ans. I forget whether he drew on it or whether I remitted him; it was paid by me, through the Camden Con. Oil Co., for Thompson and Payne.

Ques. 56. Did you, prior to the receipt of the dispatch from Payne & Thompson, mentioned by you above, have any conference or correspondence with them, or either of them, about the sale of said property to said Shattuck, or relating to their offering an "upset bid" for the property?

284 Question objected to upon the ground that the defendant Camden is not bound by any conferences or arrangements had between the witness and Thompson and Payne.

Ans. Yes; I did, either or both, and I don't remember which; to the best of my recollection, I had some correspondence with them.

Ques. 57. Did you, on the same day of the receipt of said telegrams, or the day before, send them, or either of them, a telegram relating to the offer of the "upset bid" by them?

Ans. I have no recollection of having done so.

Ques. 58. Have you any knowledge of any telegram being sent to them from Parkersburgh, about that time, in relation to said sale or "upset bid?"

Ans. I have no recollection; I may have sent them telegrams myself on that subject, but I have no distinct recollection of it at this date.

Ques. 59. Can you ascertain by examination whether you did send such telegrams?

Ans. No; I have no copies of any such telegrams.

Ques. 60. By what line was such *lines* sent, if at all?

Ans. By the Western Union Co.

Ques. 61. Was there any previous understanding between yourself and the said Payne & Thompson in relation to their offering an "upset bid" for the property?

Ans. There was.

Ques. 62. How and when was that understanding had?

Ans. Either by correspondence or conference, as before answered, during the month of June, 1884, and prior to making the offer, but I cannot more definitely fix the date.

Ques. 63. Did you or not, before that time, write them one or more letters in relation to this matter of having the sale to Shat-

tuck set aside by offering an "upset bid," if necessary,
285 to accomplish that purpose?

Ans. I cannot at this time say just what, or whether any correspondence was had with them, or whether it was by conference.

Ques. 64. If it was by letter, have you not a copy of that letter and their reply?

Ans. I have no copy of any letter written them on that subject, but I have a letter authorizing me to act for them, in my discretion, if they should not be present in person.

Ques. 65. Will you please produce that letter and allow the commissioner to make a copy of it to file with your deposition?

The defendant, J. N. Camden, by counsel, objects to all of the foregoing questions and answers as relates to the correspondence and negotiations had between the witness and Thompson and Payne as to the making of their "upset bid" therein referred to, and further to the production of any letter pertaining to the same matter, it not appearing that the said Camden was privy thereto, or that the said negotiations and correspondence was carried on at his instance or request, or that he was in any wise interested therein.

Ans. No; for the reason that it does not relate solely to the matters relevant to this case.

Ques. 66. If you corresponded with said Payne and Thompson by telegraph about their said bid, was or was not said telegrams in cipher?

Ans. They may or may not have been, if sent.

Ques. 67. Did you have any other cipher arrangement for telegraphing to the said Payne and Thompson than the cipher used by the Camden Con. Oil Co?

Ans. No.

286 Ques. 68. Was that cipher arranged for the said Thompson and Payne individually, or was it for correspondence between your Co. and the Standard Oil Co.?

Ans. If any telegrams were sent and were in cipher it was in the general cipher used by the Camden Con. Oil Co. for general correspondence with its business connections in all parts of the country.

Ques. 69. Was not the said Oliver H. Payne in June, 1884, vice-president of the Standard Oil Co.?

Ans. To the best of my knowledge, he was the treasurer, but he may have filled both offices at that time.

Ques. 70. What office did Wm. P. Thompson then hold with the Standard Oil Co.?

Ans. He was the secretary of that company.

Ques. 71. Who employed Caleb Boggess to make the motion which was made for Payne & Thompson in this cause on Nov. 3d, 1884, to release them and their surety from the bond which they had given to secure their "upset bid," and to return to them the $10,000 deposited by them for the same purpose?

Ans. I did.

Ques. 72. At request?

Ans. Under my discretionary authority to act in their interest.

Ques. 73. Who paid Boggess his fee for that service?

Ans. I do not know.

Ques. 74. Do you know any person by the name of J. N. Camden who is connected with the oil business except Senator J. N. Camden, the president of the Camden Con. Oil Co.?

Ans. I do not.

Ques. 75. Did you read an article over the signature of J. N. Camden, in the February number of the North American Review, entitled "The Standard Oil Co.," which magazine containing 287 said article is now handed you?

Ans. I did.

Ques. 76. Did you ever have any conversation with said Camden in regard to that article?

Ans. I have no recollection of ever having had any conversation with Camden in regard to that article; the first I ever saw or heard of it was after its appearance in the review of the date named.

Upon motion of W. L. Cole, counsel for petitioners, the magazine referred to above as the North American Review is filed as an exhibit with L. A. Cole's deposition, marked Exhibit No. 1, Barna Powell, commissioner.

To the filing of which book as an exhibit the said J. N. Camden, by his counsel, objects as being irrelevant to any issue raised by the pleadings in this cause.

And the said counsel not having read said article, and not having time to do so now, requests counsel for plaintiff to point out that part of said article relied upon by him as referring to the "upset bid" of Thompson & Payne, hereinbefore testified of.

Counsel for petitioners, in reply to the request above made, — that he relies upon the whole of said article, commencing on page 181 and ending on page 190, the caption and signature both inclusive, and the relevancy will fully appear upon counsel reading the article.

Ques. 77. Is the business management of the Camden Con. Oil Co. and of the S. P. Wells Oil Co. harmonious *and* otherwise?

Ans. Harmonious.

Ques. 78. Were you present at the sale of the property in controversy, made on the 17th day of March, 1885, under the decree made in this cause?

Ans. It was.

288 Ques. 79. Were the said Payne, Thompson, or Camden present at that sale?

Ans. They were not.

Ques. 80. Were any members of the Standard Oil Co. present at that sale?

Ans. I don't know.

Ques. 81. Do you know Charles H. Pratt and Mr. J. D. Archibald?

Ans. I do.

Ques. 82. Are they engaged in the oil business?

Ans. They are.

Ques. 83. Are they connected with the Standard Oil Co.?

Ans. I don't know.

Ques. 84. Have you not recognized them in business transactions as officers or agents of the Standard Oil Co.?

Ans. I have not.

Ques. 85. Where do they live?

Ans. They do business in New York. I do not know where they live.

Ques. 86. Has the Standard Oil Co. an office in New York?

Ans. It has.

Ques. 87. With what organization engaged in the oil business is either of them connected?

Ans. I believe Chas. H. Pratt is president of the Pratt Manufacturing Co. and that J. D. Archibald is an officer in the Acme Refining Co.

Ques. 88. Are the Pratt Manufacturing Co. and the Acme Refining Co. harmonious in their business with the Standard Oil Co.?

Objected to as irrelevant.

Ans. I don't know.

Ques. 89. Is it not so understood in the oil business?

289 Ans. I do not know what relations exist between the Pratt Manufacturing Co., the Acme Refining Co., and the Standard Oil Co.?

Ques. 90. I request that the witness will answer the last preceeding question as propounded?

Ans. I do not know what relations exist between the Pratt Manufacturing Co., the Acme Refining Co., and the Standard Oil Company.

Ques. 91. Do you decline to give any further answer to the question?

Ans. I have already answered under oath, and to the best of my knowledge.

Ques. 92. Were the said Archibald and Pratt present at the sale on the 17th day of March, 1885?

Ans. They were.

Ques. 93. Did the Camden Con. Oil Co. furnish, directly or indirectly, any part of the $119,100 paid by C. H. Shattuck to the commissioners in compliance with his bid made for said property on the 17th day of March, 1885?

Ans. It did not.

Ques. 94. Do you know who furnished that money or any part of it?

Ans. I don't know.

Ques. 95. Was there any arrangement or understanding between J. N. Camden, the Camden Con. Oil Co., or the Standard Oil Co. and the said Shattuck with reference to that sale?

Ans. I don't know.

Ques. 96. Do you not know that the said Camden, prior to said sale, was in conference with said Shattuck as to such arrangement or looking to the making of some arrangement?

Ans. I do know that he was.

290 Cross-examined by J. B. JACKSON, Esq:

There not being time to complete the taking of these depositions on this day, the further taking of the same is continued until May 1, 1885, at the same place and between the hours named in the annexed notice.

BARNA POWELL, *Com'r.*

May 1st, 1885.—Pursuant to the above adjournment, the taking of depositions in this cause is resumed.

Present: W. L. Cole, Esq., petitioners' counsel.
" J. B. Jackson, Esq., J. N. Camden's counsel.

Deposition of L. A. COLE continued.

Cross-examined by J. B. JACKSON, Esq.:

Q. 97. How long prior to the June term, 1884, was it that you had conversation or correspondence in relation to the offer of an "upset bid" for the property with Thompson & Payne?

Ans. It was some time in the month of June and prior to the term of court.

Ques. 98. Was J. N. Camden present at any interview had by *by* you with Thompson & Payne on this subject?

Ans. No.

Ques. 99. State, if you know, where J. N. Camden was at the commencement of the June term, '84, of the court.

Ans. I do not know.

Ques. 100. Was he in the city of Parkersburgh; if not, how long had he been absent?

Ans. To the best of my recollection he was not in Parkersburgh; from about May 1, 1884, until his return from Europe in the fall of that year.

291 Ques. 101. Had you any instruction from J. N. Camden prior to said term of court to employ counsel for him, or in behalf of the Camden Con. Oil Co. to make or offer an "upset bid" for said property?

Ans. I had not.

Ques. 102. Were you authorized to propose an "upset bid" for said property on behalf of any other person or corporation than the said Thompson & Payne?

Ans. I was not.

Ques. 103. At whose instance did you employ Mr. Marshal to offer said bid to the court?

Ans. I employed him under my discretionary authority from Thompson & Payne.

Ques. 104. After the bid was allowed by the court did you go to Cleveland on this business and what did you do?

Ans. I went to Cleveland and got the bond signed by Thompson & Payne and brought it back to Parkersburgh.

Ques. 105. Did any person here sign the bond as surety; and, if so, at whose instance did he do so and under what arrangement?

Ans. W. N. Chancellor signed the bond with Thompson & Payne at my request, but on condition that before signing I should give him adequate indemnity against any possible liability which might attach to him by reason of his joining them in the bond. When I went to Cleveland it was as much for the purpose of securing an indemnity bond for Chancellor, the local surety, as for any other purpose, and I brought back from there a bond for $250,000, made by Thompson and Payne in favor of W. N. Chancellor, to protect him from any loss or damage which he might suffer by reason of 292 any loss which he might sustain by reason of his joining Thompson & Payne in the bond made to the court. I delivered the indemnifying bond to W. N. Chancellor, who then signed the bond which was delivered to the court.

Ques. 106. Was J. N. Camden in Parkersburgh on the 3d day of November, 1884, or about that time, while the court was in session?

Ans. He was not.

Ques. 107. Did he authorize you at that session of the court to move for a surrender of the bond of Thompson & Payne and the return of the $10,000 deposit?

Ans. He did not. I never had any correspondence or conversation with him on the subject.

Ques. 108. Was he (Camden), so far as you know, personally interested in said motion?

Ans. Not to my knowledge.

Ques. 109. After you received the $10,000 deposit returned to Thompson & Payne by order of the court, and after the order was entered cancelling the bond of Thompson & Payne, did you call upon Mr. Chancellor to return the indemnifying bond; if so, did you receive it and what became of it?

Objected to by petitioners' counsel because it is irrelevant.

Ans. I called upon Mr. Chancellor and showed him a certified copy of the order of the court cancelling the $250,000 bond of Thompson & Payne; whereupon he delivered to me the indemnifying bond of Thompson & Payne in his favor. I then erased the signatures of Thompson & Payne and returned it to Cleveland by mail.

293 Re-examined by W. L. Cole, Esq.:

Ques. 110. Are you not mistaken when you say in your cross-examination that J. N. Camden was not in Parkersburgh on the 3d day of November, 1884, or about that time, while the court was in session?

Ans. Not to the best of my recollection.

Ques. 111. Was not Mr. Camden here on the 4th day of November, 1884, the date of the presidential election?

Ans. To the best of my recollection, he was not. I have no distinct recollection of the events of that day other than that I had the pleasure of voting for James G. Blaine on that day.

Ques. 112. Was Caleb Boggess here on the 3d day of November, 1884, when you saw him in reference to making the motion for the cancellation of said bond?

Ans. He was.

Ques. 113. Did he come here at your request for that purpose?

Ans. He did not. He was here in attendance on the term of court.

Ques. 114. Was he not here at that time as counsel for J. N. Camden as purchaser of the property in this cause at the sale made Oct. 1, 1884?

Ans. I don't know.

Ques. 115. Had he not before that time been employed by said Camden as his counsel as such purchaser?

Ans. I don't know.

Ques. 116. Who was surety for Thompson & Payne on their indemnity bond to Chancellor?

Ans. There was no surety; it was their personal bond simply.

Ques. 117. Since your examination of yesterday in this cause
294 have you had any conversation with J. N. Camden in relation
to the article in the Northern American Review, to which your attention was called yesterday?

Ans. I have.

Ques. 118. Did he or not disclaim the authorship of said article?

Ans. He neither did nor did not.

Ques. 119. Did you say to him that the article had been filed with your deposition?

Ans. I did.

L. A. COLE.

There being further depositions to take in this cause, which cannot be completed to-day, by consent and agreement of counsel the further taking of said depositions is continued until May 4th, 1885, at the office of Barna Powell, commissioner, 47½ Third street, Parkersburgh, W. Va., between the same hours named in the annexed notice.

BARNA POWELL, *Com'r.*

May 4th, 1885.—Pursuant to the above adjournment the taking of these depositions is resumed.

Present: W. N. Miller, Esq., petitioner's counsel.
" J. B. Jackson, Esq.,— J. N. Camden.

B. M. Ambler, a witness for petitioners, being by me duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

By W. N. Miller, Esq.:

Ques. 120. What party or parties do you represent as counsel in this cause?

Ans. I represent the claim of Heman Loomis.

295 Ques. 121. Have you been or are you now retained as counsel by any other party than Heman Loomis?

Ans. I may have appeared for other parties to the record besides Heman Loomis, but for the past 18 mon's or two years I have represented only the Loomis claim.

Ques. 122. Were you ever retained as counsel by any other party except Heman Loomis?

Ans. Prior to June, '83, I was counsel for a pipe-line Co., and probably appeared for others in this suit in collateral proceedings, but since June, '83, I have not been employed or retained by any one except Heman Loomis and those interested in his claim.

Ques. 123. How, when, and by whom were you informed that W. P. Thompson and O. H. Payne were willing to offer an "upset bid" for the property in this cause, after the first sale thereof to Shattuck?

Ans. My recollection is not distinct. It was on the 1st or 2d day when the exceptions were being argued, in June last, and I could not say whether my informant was Mr. L. A. Cole or Col. Marshal. I don't remember how; it all took place at the bar of the court, while I was arguing exceptions; the chief justice asked me whether we proposed to put in an upset bid, and either I was told by the gentleman named that an "upset bid" would be offered or Col. Marshal stated it at the bar of the court. Col. Marshal was with me seeking to set aside and vacate the sale at that time.

Ques. 124. For whom did Col. Marshal appear in that proceeding?

Ans. I was counsel of record for Heman Loomis. Col. Marshal appeared to sustain the exceptions I had filed in Loomis' name. He was employed by Mr. Camden, as I understood, to assist me in vacating the sale. 296

The first I knew of his representing Thompson & Payne was after we got into the argument and into the case. My recollection is that he did appear for Thompson & Payne as well as to appear with me.

Ques. 125. From what source did you get your information that Col. Marshal appeared for J. N. Camden?

Ans. I did not understand him to appear in the name of J. N. Camden, but Mr. Camden employed him to appear in the name of Heman Loomis. I so understood it from Mr. Camden. I don't know who employed him for Thompson & Payne.

Ques. 126. When did you first learn that Mr. Camden employed Col. Marshal in that capacity and for the purposes you have named?

Ans. Several days, probably ten or more, prior to the hearing. I can be exact by reference to papers not with me.

Ques. 127. Was J. N. Camden in Parkersburgh during the time the argument upon the exceptions by yourself and Col. Marshal were proceeding in court?

Ans. I believe not.

Ques. 128. Had you any information before the day you argued the exceptions that an upset bid for the property was proposed to be offered?

Ans. To the best of my recollection, I had not.

Ques. 129. Who informed you first that Thompson & Payne proposed to offer an upset bid?

Ans. I can give no other answer than as above.

Ques. 130. Did you not get all the information you had re-
297 specting the purpose of Thompson & Payne to offer an "upset
bid" from Col. Marshal in the presence of the court during the progress of the proceedings upon the confirmation of the sale to Shattuck, or about the time of closing the argument on the exceptions?

Ans. I got my information either from L. A. Cole or Col. Marshal during the time that hearing was in progress; my recollection is not exact.

Ques. 131. Did you have any communication with Thompson & Payne or either of them, by letter or telegram, in relation to said "upset bid," before or after it was offered? If so, state what the communication was, what was said by them or either of them in relation to said bid, and if you have letters or telegrams from them on the subject please produce and file them with the commissioner or permit him to copy the same.

Ans. I had no communication with them, direct or indirect, on the subject.

I said nothing about the "upset bid" and heard nothing about it, except what passed between L. A. Cole, Col. Marshal, and myself, and except what occurred in court.

Ques. 132. Were you present on the 3d day of November, 1884, when the order was made, on motion of Thompson & Payne, cancelling their bond and ordering their deposit of $10,000 to be returned to them?

Ans. I was not.

Ques. 133. Where were you at that time?

Ans. I have no distinct recollection of the transactions of that day, except that I was in town until about ½ past 4 o'clock, when I went to Williamstown to make a speech. I refer to Nov. 3rd, upon which day the order seems to have been entered.

298 Ques. 134. Did you know that the motion was to be made?

Ans. The witness desires to explain: I have been counsel in this matter as the sole representative of Heman Loomis and his claims. I have objected to being sworn by either side, in the present controversy, because of my professional connection with it. I am here now, in obedience to a summons, and would be excused if I could. I do not now waive any question of privilege; personally I have no objections to telling all I know in regard to these transactions, but I don't want to make improper disclosures. In answer to the question, I did know that proceedings would be taken to vacate the bond, on the ground that a bid had been offered in excess of $173,000.

Ques. 135. Why did you not resist said motion and object to said order being made?

Ans. I expected and believed that Mr. Camden would pay $173,050 for the property, unless the court accepted a certain contract which is in evidence in discharge of Camden's liability as a bidder, and I had filed a petition for Heman Loomis asking the confirmation of the sale to Camden on the basis of his contract, and expected to look to him (Camden).

The further taking of these depositions is continued by adjournment to May 5th, 1885, at the place named in the above adjournment, and between the hours named in the annexed notice.

BARNA POWELL, *Com'r.*

299 May 5th, 1885—Pursuant to the above adjournment the taking of these depositions is resumed.

Present: W. L. Cole, Esq., petitioner's counsel.
" J. B. Jackson, Esq., J. N. Camden's counsel.

B. M. AMBLER'S examination continued :

Ques. 136. Did you not consider such order as was made prejudiced to the interest of your client, Heman Loomis?

Objected to as calling for the opinion of the witness.

Ans. I did not know the form of the order until some time after it became of record. I believed on the whole that a release of the bond would not prejudice Loomis' interests because I relied on the contract if the court would confirm on that basis, and if the court ignored the contract I expected Mr. Camden to pay the $173,050.

Ques. 137. What reason had you to suppose that Mr. Camden would pay the cash for said property if he should become the purchaser thereof at a sum in excess of that offered by Thompson & Payne, and if the contract between the creditors was not accepted as a compliance with the terms of sale?

Ans. A full answer to this question would require me to state matters in part which I understand are claimed as privileged. I desire to keep on the safe side of propriety, and, as at present advised, I must respectfully decline to answer.

Ques. 138. Who makes the claim of privilege?

Ans. A gentleman who was so connected with interests which he and Loomis had in some degree in common that frequent conferences and negotiations between him and me occurred and 300 many matters passed between me and this party because of my connection with Loomis' matters and of my professional relations to Loomis' claim.

Some things, I have no doubt, are covered by the rule of privileged communications; of others I am doubtful, and would prefer to keep on the safe side.

Ques. 139. When and for whom did you first get information that the communications referred to were claimed to be privileged?

Ans. Within the past few days I was told so by Mr. Camden, as to some matters.

Ques. 140. Did not Mr. Camden make this claim since the proceedings in which this testimony is being taken were begun?

Ans. It is fair to say that I had then been named as a witness in a notice to take depositions in this matter. I afterwards saw Mr. Camden, and the fact of my being proposed as a witness was mentioned. I told him some matters I would probably be called to testify, and probably in response to a question from me, he stated that he considered that matter privileged.

Ques. 141. Did that matter to which you refer in any way affect your belief that Mr. Camden (in case the sale to him was not confirmed upon the basis of the contract between the creditors *he*) would pay the cash for the property?

Objected to as calling for an opinion or belief and otherwise improper.

Ans. I must decline to answer that question; and I would state in this connection that I have never, directly or indirectly, been
retained, paid, or employed by Mr. Camden in this cause, the
nearest approach to client and attorney between him and
301 me being that his interests lay in the same direction as
the Loomis claim and was seeking to accomplish the same
results. I represented a claim on which his interests in some degree turned.

Ques. 142. At what time were the communications to which Mr. Camden referred and claimed as privileged made to you?

Ans. I must decline to answer this question.

Ques. 143. Has any other person interested in these proceedings, other than J. N. Camden, made any claim that communications made to you affecting any matters upon which you are called to testify are privileged communications?

Ans. Mr. Camden is the only one who has made the claim in terms; I, of course, have myself intended to protect the privilege on Loomis' behalf.

Ques. 144. Did any other communications to which Mr. Camden referred take place prior to the day he purchased the property at the commissioner's sale?

Ans. I must decline to answer for reasons stated.

Ques. 145. Were you requested by Payne & Thompson, or by any other person, to make the motion that was made to cancel their bond and allow their deposit of $10,000 to be withdrawn; and, if so, where, when, and by whom?

Ans. No one has claimed that this matter is privileged, but it is clearly so, in my mind, and I must decline to answer.

Ques. 146. Were you requested by Payne & Thompson to make said motion?

Ans. I never communicated with or saw Mr. Payne in my life, and I don't think the matter was ever mentioned to me by Thompson.

Ques. 147. Were you requested to make such a motion?
302 Ans. I believe I was.
Ques. 148. Who did make the motion?

Ans. Of my own knowledge I do not know; I was not there.

Ques. 149. When was it that you were requested to make the motion?

Ans. I can't fix the date. My only recollection as to the date of the order depends upon the record.

Ques. 150. Was you requested to make this motion on the day the order was entered?

Ans. I have no means of fixing relative dates in this matter.

Ques. 151. Can't you fix approximately the time you were requested to make the motion with reference to the date the order was made? If so, state as near as you can with reference to the date of the order.

Ans. I can't fix the date of the order except by the record, which appears to have been entered on the 3d day of November, '84. I suppose I must have been spoken to a few days before that, but I can't fix the interval.

Ques. 152. Did you have any conversation with Mr. Camden and Caleb Boggess about the making of said motion?

Ans. I must decline to answer.

Ques. 153. Was Mr. Boggess, at the time you were requested to make said motion, counsel for Mr. Camden as purchaser of the property under the decree in this cause?

Ans. Yes, sir; to the best of my recollection.

Ques. 154. Did Mr. Boggess confer with you about making said motion?

Ans. Mr. Boggess and I were personal friends; he did come to my office about this matter and talked with me about it, and 303 he perfectly understood that I was not seeking the cancellation of the bond. My belief was that he was speaking to me because he thought I was more familiar with the record than he. I was not in the talk with Mr. Boggess acting officially in anyway, but simply conversation between gentlemen—both counsel, it is true—and I think that we discussed the form of the order and the proceeding.

Ques. 155. Was the time you refer to when Mr. Boggess was at your office before or after you were requested to make the motion?

Ans. After; I can't say how long after.

Ques. 156. Why did you refuse to make the motion when requested to do so?

Ans. I thought it might subject me to criticism and might complicate my case, and I was not clear what effect it might have on Loomis' interest. I desired to be free to take any position with regard to it that might become necessary.

Ques. 157. If the court should be of opinion that the communications made to you under the circumstances stated in your testimony, and which you say are involved in the matters upon which you have declined to testify, are not privileged communications are you willing to testify fully respecting them?

Ans. If all parties would agree I would testify to these matters, and, of course, I would submit to any ruling or order of the court. I have not decided, in my own mind, that these matters are privileged, and I want to say again that I feel somewhat embarrassed 304 at being sworn in the cause where I am active counsel.

Ques. 158. Would you have hesitated to have testified respecting the communications referred to upon the ground that they were privileged had not Mr. Camden claimed them to be so since these proceedings began?

Ans. I should have hesitated, and I had consulted with several of my nearest and most trusted friends at the bar to know what my duty was.

Ques. 159. Where did Caleb Boggess reside?

Ans. He resided at Clarksburgh, W. Va. I don't think he was ever connected with the case prior to October, 1884.

Ques. 160. Has he ever acted as counsel in this case, so far as you know, except for J. N. Camden?

Ans. The record shows that he is counsel for Thompson & Payne—I refer to the order of April 27th last—and the depositions of L. B. Dellicker and L. A. Cole, taken in that cause, show his connection with the case. Of my own knowledge, I don't know when, or how, or if Mr. Boggess was employed by Thompson & Payne.

J. N. Camden, by counsel, objects to all the foregoing deposition upon the ground that the witness is of counsel in this cause; that the matters testified to relate to matters that came to his knowledge while he so acted as counsel, and that the testimony is incompetent, and upon the further ground that it relates to conversations had with parties in the absence of the said Camden and without his priority or consent; and further, because the same calls for the opinion of the witness as to several matters therein testified 305 to, and because the same is irrelevant to any issue in this cause.

And further this deponent saith not.

B. M. AMBLER.

UNITED STATES OF AMERICA, } ss:
District of West Virginia, }

I, Barna Powell, a commissioner of the circuit court of the United States for said district, duly appointed and qualified by said court, do hereby certify that the foregoing depositions of A. K. Leonard, L. B. Dellicker, L. A. Cole, and B. M. Ambler were duly taken by me pursuant to the annexed notice, at the time and place and within the hours in the annexed notice specified, except that the deposition of B. M. Ambler was taken at my office, 47½ Third street, instead of at the office of the clerk of the circuit court of the United States, at the U. S. court-house, in Parkersburgh, W. Va., by consent and agreement as above set forth.

Given under my hand this 5th day of May, 1885.

BARNA POWELL, *Com'r.*

306 Exhibit No. 1, filed with the foregoing depositions, is in words and figures following, to wit:

The Standard Oil Company.

Senator Camden.

Few things in fiction are more wonderful than the history of petroleum since the opening of the first oil well in Pennsylvania on August 28, 1859. Four years before that time, Jonathan Watson, who owned a tract of land on Oil creek, noticed oil flowing from a spring. He took a bottle of it to Hartford, Conn., to have it analyzed by a well-known chemist. This authority pronounced it an artificial product and not a natural one. Had any person then predicted that Northwestern Pennsylvania and West Virginia would be found to contain vast reservoirs of this oil, and that it would, in a score of years, have added $1,000,000,000 to the wealth of the nation, he would have been considered insane; yet such a prediction would have fallen short of the truth. There are to day more than 20,000 wells producing this oil, and over 100,000 persons are exclusively engaged in handling it. Railroads have been built to transport it, while through a network of over 4,000 miles of iron pipes, running over mountains, beneath rivers and through cultivated fields, streams of it pulsate continually. Oil from the wells in Pennsylvania lights the streets of South American cities, cathedrals in Europe, the mosques of Asia, the shop-windows of Jerusalem, and it is known and used over the whole civilized world.

307 While Col. E. D. Drake has the credit of being the first person to drill successfully for oil in this country, Mr. Charles Lockhart, of Pittsburgh, Pennsylvania, was probably the first person who made the production of the article a business. The discovery of petroleum in Pennsylvania was followed closely by its development in West Virginia, on the Rathbone estate, at Burning Springs. The first wells bored in West Virginia yielded oil at less depth and in greater quantities than the first wells of Pennsylvania, and in consequence West Virginia was supposed to be the richest territory, but the immense yield resulting from deeper boring and the discovery of new territory in Pennsylvania soon left that State without a rival.

In 1860 Mr. Lockhart visited Europe to introduce the crude and refined oils there, and although his samples attracted little attention at the time his trip was not without subsequent good results. Beginning in 1862 with shipments of 588,000 gallons of oil to Germany, which was sold for $2,000, less than the cost of transportation across the sea, the exportation of oil has steadily increased, until it now reaches but little less than 2,000,000 gallons a day. For the first seven months of 1882 the value of the exports of petroleum and its products was $30,946,856, which was exceeded only by the exports of cotton and cereals. During the first eight months of 1882 433,261,181 gallons of crude oil, or its equivalent in refined, were exported, against 390,016,648 gallons during the corresponding period in 1881.

308 These surprising results are by no means due to the simple discovery in 1859 that oil could be obtained by drilling for it. Petroleum was no new thing in 1859. It has been known in

Europe and Asia since the earliest ages of the world. Kerosene was extracted from the cannel-coals of England in 1694, as recorded in the specifications of letters-patent granted at that time. It was afterward made from the boghead shales of Scotland, the albertite of New Brunswick, and the asphaltum of Trinidad. Coal oil was also manufactured from coal in Prince Edward's Island in 1846. A kerosone oil manufactory of this kind was established on Newtown creek, Long Island, in 1854, several years before the oil discoveries in Pennsylvania. Kerosene, however, was a manufactured article, while petroleum is the natural product of the earth. It is produced in the north of Italy, and was used there for illuminating purposes before attention was called to it in this country in 1859. It is also found in Germany, France, Russia, India, in the Island of Trinidad, and in Canada.

It is plain, therefore, that it is to neither priority of discovery nor monopoly of the world's supply that the overwhelming pre-eminence of American petroleum is due. Quite as much from the native superiority of the article this pre-eminence results from our peculiar national genius and capacities in respect to both mechanics and commerce. The following example will serve to illustrate the difference between American and other methods in this industry. In
1735 an oil field was discovered in Alsace. It proved a prof-
309 itable investment, and oil, used there principally for lubricat-
ing purposes, is still obtainable in paying quantities. The striking peculiarity is that the working of this field has been developed to the extent of only four wells in one hundred and fifty years, while the same crude methods for obtaining it are in use now that were used in the beginning. The only improvement is that within a few years a boiler and engine for hoisting purposes have been substituted for human labor. The Cherry Grove district, in Pennsylvania, is not larger in extent than the Alsatian field, and yet three hundred and fifty wells were sunk there within two or three months of 1882. Still more striking comparisons could be made with other and less civilized countries where petroleum has been obtained in greater or less quantities for ages.

It may be admitted, then, that to our national characteristics is to be largely attributed the unprecedented development of the American petroleum industry. The specific agency through which this development has been mainly effected is the organization known as the Standard Oil Company, which may be defined to be an association of business houses united under one management in such a manner as to insure harmony of interests and a consolidation of capital adequate to any possible business emergency, yet each retaining its individuality, and even competing sharply with the others.

In order to appreciate what the Standard Oil Company has achieved it is first necessary to glance at the condition of the oil industry at the time when this company entered it. All the circum-
stances surrounding the first production of petroleum tended
310 to make it an unbusiness-like enterprise. The novelty of the
article, the romance of the search for it in the wilderness, the

sudden and fabulous wealth that rewarded success; all these attracted especially the unsettled and adventurous elements of the community, and made the oil regions in 1865 almost the counterpart of California fifteen years before. Truth, stranger than fiction, turned men's heads. Sober business was neglected. The one idea was to obtain a fortune by speculation or by a fortunate turn of the drill. Volumes have been written about the vicissitudes of this extraordinary period. Colonel Drake, the pioneer, wasted a fortune in speculation and in his last years was only saved from actual want by a pension which the State of Pennsylvania granted him (and afterwards continued to his widow), refuting the old proverb of the ingratitude of republics. Shaw, who discovered oil in Canada, also lost in speculation the money his discovery had brought him, and ten years later, while working for two dollars a day in Titusville, died a stranger and forgotten. John Steele, or "Coal-oil Johnny," as he was familiarly called, the youth who went to bed one night a laborer and awoke next morning a millionaire, squandered his wealth, and is now earning a modest living at fifty dollars a month. The Story farm, famous for its immense productions, was sold for $30,000. It soon proved to be worth a million. In May, 1865, there were two buildings in Pithole, and three months later 15,000 persons found shelter there. Land which a few months before sold for an insignificant sum per acre was resold in
311 town lots at the rate of $10,000 for a piece large enough to build a house upon. The Holmden farm, which was bought for $25,000, was sold in three months for $1,600,000. Magnificent hotels and theaters were built and railroads and pipe lines constructed to the place. A few months latter the oil was exhausted and the town deserted. To-day the relics of a few houses stand to mark the spot. In another case one of these wilderness hotels, costing $65,000 to build and fit up, was suddenly stranded by the receding tide, and being sold for taxes, almost before the paint was dry, brought less than $50.

In such a condition of affairs the state of the oil industry was, of course, deplorable from a business standpoint. The universality of speculation; the utter disregard of the laws of supply and demand aggravated by the haste of each land-owner to multiply his wells and get as large a share as possible of the underlying oil pool which his neighbors were sucking up; the lack of handling facilities resulting in prodigal waste; the apparent instability of the whole business, which was hourly expected to vanish, and in many instances did vanish as suddenly as it had appeared, all this conspired to make the oil regions a pandemonium of excitement and confusion, and the simple statement of a man's connection with oil was a severe blow to his credit. The refining of oil at this early period was on a basis but little better than that of its production. Processes were extremely crude, and their product would to-day be unmerchantable for illuminating purposes. Still the demand for it was
312 great and growing, and refineries multiplied. The competent and the incompetent rushed into the business in shoals, until the refining capacity of the country was more than three times the

demand for consumption. Reaction, failures, the demoralization were the inevitable consequences.

The refiners recognized the dangerous and demoralized condition into which the excessive capacity of the refineries had brought them. The world would take only so much refined oil as it needed for immediate consumption and no more, and the manufactured article, unlike the crude, could not be stored for any length of time. Various efforts were made to correct this evil of overproduction through pools and running arrangements, restricting capacity, but pools were broken and agreements were ineffectual until the lowest ebb in the oil business was reached. By this time bankruptcy had overtaken a large portion of the refining interest and was threatening all. Such, in general, was the situation out of which was developed the Standard Oil Company as a necessity to arrest the conditions which were driving all connected with the business to bankruptcy and ruin. To limit production was impossible. The extent of the oil field was a matter of conjecture, while the number of persons who would engage in boring and in prospecting for new territory was without limit. Leaving production, therefore, to take care of itself, the labors of the Standard Company were concentrated upon the refiing interest with the object of stopping the disastrous overproduction of the manufactured products. Without entering into the details of their progross,
how the principal refining interests were first united under the
313 management of the Standard Company, and how others gradually
came into co-operation, whilst those less hopeful of the future of the business were bought out for money; how ineligibly located or poorly equipped refineries were dismantled and others better adapted to their purposes were improved, it is only necessary to state that their success was such as to vindicate the wisdom of their broad plans and to establish the superiority of their business methods. It did more than this. It demonstrated that under such firm and intelligent control the oil business had possibilities which the doubting ones and the public generally had not seen, and this demonstration was followed by an antagonism to the company such as all great and successful organizations have to meet. How these possibilities have been developed is indicated by the facts that a day's work of the Standard Company at this time involves, among other things, the handling of more than 60,000 barrels of oil, the putting together of ninety tons of tank iron, and the making of 100,000 tin cans, holding five gallons of refined oil each, and 25,000 oak barrels, to hoop which requires 150 tons of iron.

But, while a commanding position in refining was thus being won, the Standard managers were equally active in the mechanical and chemical departments of the business. Under their direction the process of refining was improved more rapidly than ever before. Oils grew better, cheaper, and more uniform, and as the problems of distribution were grasped and solved the market for these products
widened continually; in a word, the phenomenal genius for
314 organization, which all concede to the Standard, produced its
natural results throughout the entire business, and from being one of the most irregular and unprofitable of American industries

oil refining and selling became thoroughly systematized, and in the train of system followed economy and success.

The question of oil transportation and storage early engaged the attention of the Standard corporation. At the outset the methods of carrying oil were as primitive as might be. Imperfect barrels carried on wagons were jolted to and fro over the corduroy roads which connected the wells with the streams, where rafts and flatboats received them for further laborious transportation. With such methods as these and the universal craze for well-boring, it is small wonder that a great proportion of the oil brought to the surface had to soak back into the earth or float off through the water-courses of the vicinity. This condition of things, however, did not last long. Railroads were built, tank-cars invented, and finally, in 1865, iron pipes began to be laid to bring the oil from the wells. During the ten years following a number of pipe-line companies were organized for running and storing the cru*id* liquid. Each company covered certain territory, and producers availed themselves of the pipe-line facilities. Each producer received a certificate of deposit for his oil, redeemable in oil at any time on payment of storage charges. These certificates, which were not negotiable, were influenced somewhat in value by the pecuniary standing of the company, but more particularly by the nature of the territory the pipe-line company
315 covered; it was like the old State bank currency. Outside of
its particular territory a pipe-line certificate was at a discount. In 1877 the Standard Oil Company consolidated these various organizations under its own control as the United Pipe Lines. The result is that to-day an oil certificate, like a greenback, is as good in one part of the country as another, and can be negotiated at any of our commercial centers.

These certificates are practically the oil of our commerce. Under the present system the collection and handling of crude oil is as nearly perfect as it can be made. The company runs a pipe to each well, even to the most unimportant and isolated, without charge to the producer for the accommodation, thus enabling him to dispense with all local storage. It takes oil anywhere and delivers it at any railroad shipping point in the oil regions which the holder may indicate, and all this without any other than the regular storage charges. Still further, as the pipe-line certificates are uniformly for 1,000 barrels each, the Standard, for the accommodation of producers having smaller lots to dispose of, keeps its own men constantly "at the front," ready to buy any such lots for cash at the current market price for larger lots ruling at the oil exchanges on that day. This, as will be seen, places the smallest producer on an equality with the largest. The amount of oil held by the United Pipe Lines is gauged every day, and once each month a sworn statement is sent to a state official and also publicly posted in the exchanges, giving the quantity and location of all oil on storage, together with certain other particulars. This system precludes all possibility of an
316 overissue of certificates and warrants their integrity. During
the year just passed the United Pipe Lines purchased over

half a million barrels to make up shortage from the natural shrinkage of the oil which they held on storage.

It costs $250,000 for the tankage in which to store 1,000,000 barrels of petroleum, or, for land and tanks and incidentals, $300,000. A plot of one hundred acres accommodates only eighteen tanks, as they have to be detached and trenches dug around them to provide against fire. Cannon are kept at each tankage station to perforate the tanks when on fire so as to let the oil out into the ditches that it may burn gradually and prevent overflow and still greater damage. Most of the fires at the tanks are caused by lightning. Losses of this kind for the oil only are assessed *pro rata* on all the holders of certificates, thus effecting the cheapest and best kind of insurance. Each tank has a capacity of 35,000 barrels, and the loss of this amount would be made good by an assessment of one-tenth of one per cent. on all oil at present stored.

In six years there has been an increase of some 30,000,000 barrels of oil on storage with the United Pipe Lines. To provide for this increase the company constructs an average of one iron tank of the regular capacity every day. The pipe lines are now connnected with about 20,000 wells, and, in addition to the 4,000 miles of pipes already referred to, the company have now in operation more than a thousand miles of trunk pipe lines running from the oil regions
to Cleveland, Pittsburgh, Oil City, Buffalo, and New York,
317 and is rapidly completing trunk lines to Philadelphia and
Baltimore, of which over 200 miles are already laid. The pumping stations along these trunk lines are about twenty-five miles apart. At each are two or more tanks, one of which is being emptied while another is being filled. A six-inch pipe is used, which can deliver 16,000 barrels each twenty-four hours.

These brief statements, however, give only an outline of what the Standard Oil Company has accomplished. It has been the instrument, if not the cause, of almost the whole development of the oil industry—production excepted—during the last decade; of vastly improving and bringing to uniformity all oil manufactures; of cheapening these latter to an unprecedented degree and pushing the introduction of American petroleum to the remotest parts of the earth; of furnishing employment to a host of men equal in number to the standing army of the United States, and of giving an impulse of prosperty to every locality in which its operations are conducted. It has probably had less trouble with its enormous laboring force than any other corporation of comparable importance in the world.

In view of this state of facts it might reasonably be supposed that the Standard Oil Company would have been entitled in some degree to public commendation for what it has accomplished and the beneficial results produced—not that it has any claim on the score of philanthropy. It has not It was organized and is operated to do
in the best manner the largest possible amount of business.
318 But the fact that philanthropy is not the mainspring of its
corporate action cannot destroy the other fact that great public benefit has resulted from the Standard's work; greater, unquestionably, than could ever have been brought by the use of even

equal capital and equivalent energy divided between a score or a hundred disconnected and unfriendly organizations. In place, however, of the approbation which has been referred to, the Standard Oil Company has for some years been the target for unlimited abuse and misrepresentation. The reasons for this lie partly on the surface. No great enterprise was ever carried through without interference with somebody or something. The choicest field cannot always be saved from the advancing railroad ; yet no one, save, perhaps, the owner of the property, will insist that railroads should not be built. The parallelism does not need elaboration to indicate the origin of much of the opposition to the Standard. But this company is at least the equivalent of a railroad in importance, and if its progress had worked actual hardship to individuals it could not be justly condemned therefor. In point of fact, however, less of such hardships can be charged upon the Standard than upon most corporations. In all its thousands of miles of pipe-laying no right of eminent domain has ever been exercised, but every foot of the right of way has been purchased by agreement with the land-owners. So, too, in consolidating its refining interests, there is no instance in which the company did not pay full value for what it received. Amongst
the enemies of the Standard were men whose hardships were
319 wholly of their own making. They were the men who, in the
infancy of the combination, when all refiners were invited to
ally themselves with it and take Standard stock to the amount of the agreed valuation of their property, were ready enough to sell, but preferred money to stock, and after getting their price congratulated themselves on being wiser than "the visionaries," who were risking everything on the practicability of their undertaking and the continuation of the oil supply. When, however, the hope of these visionaries were more than realized, the cautious sellers for cash became unhappy and finally cried out, not, however, against their own mistakes, but against this dangerous monopoly which had wrested their property from them. There was no lack of unsuccessful oil men, sensational writers, and persons with grievances to help give utterance to the anti-Standard cry. The bitterest grievances were those of the small refiners, whose real complaint was that the Standard, with its improved processes and immense product, had too greatly cheapened the cost of manufacturing and marketing refined oil. As it would not do, however, for them to complain that the public was getting its oil too low, they, too, raised a clamor against the "monopoly." A class of politi*t*ians, adopting what is known amongst themselves as "the anti-monopoly racket," were anxious to inflame the public mind against all large corporations. The Standard seemed most vulnerable. It could not be denied that it
was a corporation—that it was rich, busy, and little given to
320 talk, and, as it paid no attention to attacks, its enemies in-
sisted that it was a guilty silence. The public ear was gradually gained by frequent repetitions of uncontradicted calumny, and several respectable journals and magazines lent themselves in excusable ignorance of the true state of the case to the dissemination of the same. The Standard came to be referred to and popularly pic-

tured as a giant monopoly, a monster of iniquity, a crusher of the innocent and helpless, a corrupter of railroads, and a stealthy foe to the liberties of the people. The effect of all this was sought to be heightened by a flavor of mystery and terror. The officers of the company were likened to the tyrants of old, and their private offices to the secret chambers of the Inquisition, and the public listened and felt its hair rise with horror.

Meanwhile the Standard was, as usual, attending strictly to its legitimate business, refining and selling oil, and employing its great resources in the work of increasing storage facilities rapidly enough to save the producers from the loss of their oil, but to its accusers it made no answer. Whether its indifference to public accusations was the best course under the circumstances it would be fruitless to discuss. Perhaps it was, as all calumny eventually dies of itself, and in the oil regions, where the hostile feeling had its birth, it is indeed practically at an end. Many, however, may still be surprised to learn
that the Standard Oil Company is not the monster that it
321, 322 has been represented; that it has never had a contract with
a railroad company which a fair-minded man could pronounce to be against public policy, good morals, or good business principles; that it has never broken an agreement nor committed an act of treachery; that it is not a speculator nor a manipulator of speculative prices, as has been so often charged; that it is not a monopoly and never can become one, despite its present great preponderance in the trade; in short, that this great bugbear is nothing more nor less than an organization of laborious, painstaking men, who, with great abilities and great opportunities, have made a great success by legitimate means in a legitimate business.

J. N. CAMDEN.

323 On the 14th day of May, 1855, the following replications were filed in the clerk's office, to wit:

Replication of Heman Loomis, Petitioner to Answer of J. N. Camden, Filed May, 1885.

The Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. MAYHEW & Co.
vs.
THE WEST VIRGINIA OIL & OIL LAND Co. and Others.

This replicant, saving and reserving unto himself, now and all times hereafter, all and all manner of benefit and benefit of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, say that he will aver, maintain, and prove his said petition to be true, certain, and sufficient in law to be answered unto, and that the answer of the defendant is uncertain, untrue, and insufficient to be replied to by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these replicants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

B. M. AMBLER,
Solicitor for Heman Loomis.

324 *The Replication of the Toledo National Bank, Benjamin B. Valentine, and Robert S. Blair to the Answer of Johnson N. Camden to their Petition Filed in this Cause.*

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. B. Mayhew & Co.
vs.
The West Virginia Oil & Oil Land Company & Others.

The replicants, saving and reserving unto themselves all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said answer, for replication thereto, say that they will aver, maintain, and prove their said petition to be true, certain, and sufficient in law, and that the said answer of said defendant is uncertain, untrue, and insufficient to be replied to by these replicants, without this, that any other matter or thing in said answer contained material or effectual in law to be replied unto and not herein and hereby sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these replicants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said petition they have already prayed.

C. C. COLE,
W. L. COLE,
Solicitors for Petitioners.

325 In the Circuit Court of the United States for the district of West Virginia the following "decree" was made and entered of record on the 6th day of June, 1885:

In the Circuit Court of the United States for the District of West Virginia. In Equity.

F. L. Mayhew & Others
vs.
The West Virginia Oil & Oil Land Company & Others.

This day came on to be again heard at the present term upon the report of sale of J. B. Jackson and W. L. Cole, special commissioners, made by them on the 17th day of March, 1885, to Charles H. Shattuck, and upon the exceptions to said sale filed by the Toledo National Bank and others, and upon the petitions of said bank and others filed in this cause on the 17th day of April, 1885; and the petition of

Heman Loomis, filed herein on the 23d day of April, 1885; and the motion of Johnson N. Camden to strike said petitions from the files; and the demurrers of said Camden to said petitions; and the answer of said Camden to said petitions; and the replications of the said petitioners to said answers; and the testimony taken by the petitioners in support of said petitions; and also upon the petition of James H. Carrington and others, filed herein on the 21st day of Nov., 1884, to vacate the order entered herein on the 3d day of Nov., 1884, permitting Wm. P. Thompson and Oliver H. Payne to withdraw
326 the deposit of ten thousand (10,000) dollars theretofore paid
into court by them, and purporting to cancel the bond given by them and Wm. N. Chancellor to bid one hundred and seventy-three thousand (173,000) dollars for the property mentioned in this cause at any future sale thereof; and upon the decree entered in said cause on the 23d day of Nov., 1884, and the order made therein since that date; and was argued by counsel for the several petitioners and for said Camden.

Upon consideration whereof the court is of opinion that by said bond the parties thereto were obligated to bid for the property mentioned in this cause the sum of one hundred and seventy-three thousand (173,000) dollars at any sale thereof that might be made after the date thereof under any decree in this cause. The court is also of opinion that, by virtue of his bid for said property on the 1st day of October, 1884, the said Johnson N. Camden is liable to pay the difference between his said bid, to wit, the sum of one hundred and seventy-three thousand and fifty (173,050) dollars, and the bid of the said Shattuck of one hundred and nineteen thousand and one hundred (119,100) dollars, if the said last sale shall be confirmed, and all costs rendered necessary by his failure to comply with the terms of sale; and the court is also of opinion that the said sale to Shattuck should be confirmed, unless either the said Camden or the said Thompson and Payne will take the said property at the amounts of their bids, respectively.

And thereupon, and after announcing the foregoing opin-
327 ion in open court, the court offered the said Camden, who
was present in court with his counsel, to permit him to take the said property at the sum so bid for the same by him, and confirm the sale of said property to him if he would consent so to do and pay the cash therefor, which the said Camden in open court refused to do, and declared he would not take the property unless the sale should be confirmed to him on the basis of the contract mentioned in his petition filed on the 6th day of October, 1884. The court then called on the said Camden, who acted as the agent of the said Thompson and Payne in making the bid for them, to elect for them whether they would take the said property at their bid of one hundred and seventy-three thousand (173,000) dollars and pay the cash therefor, and said Camden thereupon declared that while he had authority to make the bid originally he had not authority to make an election for them under the offer now made.

It is therefore, this 15th day of May, 1885, ordered, adjudged, and decreed that the motion of the said Camden to strike said petitions

from the files be overruled and his demurrers to said petitions also overruled. It is further ordered, adjudged, and decreed that so much of the order of the 3d day of November, 1884, as purports to cancel the said bond of said Thompson, Payne, and Chancellor, be, and the same is, hereby vacated and for naught held. It is further ordered, adjudged, and decreed that the report of the said
328 commissioners of the sale made by them to Charles H. Shattuck, on the 17th day of March, 1885, be, and the same is, approved, and the said sale is hereby ratified and confirmed, and the said commissioners are hereby authorized and directed to convey, by proper deed, the said property to the said Shattuck, and he is to be let into the possession of said property as of the 17th day of March, 1885.

It is further adjudged, ordered, and decreed that the said Johnson N. Camden is liable for and that he do pay into the registry of this court for the benefit of such of the parties to this suit, or other persons as may be entitled thereto, the sum of fifty-three thousand nine hundred and fifty (53,950) dollars, with interest thereon from this date and all costs to be taxed by the clerk, rendered necessary by his failure to comply with the terms of sale by paying the amount of his bid in cash, and any party to said cause appearing to be entitled to any portion of said sum may sue out execution, as at law, upon this decree against said Camden for the amount herein decreed against him, and all money which may be realized from said execution or executions shall be paid by the marshal into the registry of the court to the credit of this cause.

It is further ordered that Charles H. Shattuck, the receiver of said property, do settle his accounts before the auditor up to this date, and that he pay any balance remaining in his hands arising from the rents and profits of said property up to the 17th
329 day of March, 1885, into the registry of the court to the credit of this cause, and that he pay or deliver to the purchaser of said property any sum of money or other property in his hands from the rents and profits of said property from the said 17th day of March, 1885, to the date hereof, which said settlement shall be reported by the auditor to the court and his fee therefor taxed in the costs of this suit.

It is further ordered that the costs of this suit still remaining unpaid, and the costs and expenses of sale remaining unpaid, including two (2) per centum commissions to said commissioners on the amount of the last sale, as a compensation to them for all services rendered and to be rendered by them as such, be paid out of the money now in the registry of the court.

It is further ordered that the money remaining in the registry of the court, after the payment of the costs and expenses above referred to, together with any further sum that may be paid into the registry under this decree, be applied to the payment of the debts as ordered in the decree passed in this cause on the 17th day of November, 1883, except so much thereof as may be applicable to the sum still remaining due upon the debt therein adjudged to William D. Thompson, now owned by Johnson N. Camden, and the sums adjudged to Heman Loomis; and also the further sum of eighteen thousand five hundred dollars, to be held for the future de- 330 termination of the court whether it or any part thereof is applicable to the alleged judgment of Charles D. Colman, who has filed a petition in this cause claiming the same; and the amounts above specified will remain in the registry of the court until the further order of the court; the payments of money authorized by this decree shall be made by check drawn by the clerk of this court on the several banks where the funds are or may be deposited to the order of the parties entitled or their solicitors of record, and approved by one of the judges of this court, and said clerk shall take and file in the papers of this cause receipts therefor, and for all his trouble and services in so doing he shall be entitled to receive out of said funds so to be checked out by him a sum equal to one (1) per cent. thereof—the fee allowed by law.

M. R. WAITE,
Chief Justice U. S.

Thereupon Johnson N. Camden in open court prayed an appeal from this decree, which appeal is allowed to operate as a supersedeas on his giving the security required by law in the penal sum of three hundred and forty-seven thousand dollars.

June 6th, 1885. JACKSON, *D. J.*

331 And on the same day the following opinion was filed in the clerk's office, to wit:

Circuit Court of the United States for the District of West Virginia.

F. L. B. Mayhew & Co.
vs.
The West Virginia Oil & Oil Land Company *et al.*

On motions—

1. To confirm sale made to Charles H. Shattuck March 17, 1885.
2. For a decree against J. N. Camden personally for the difference between his bid of $173,050, October 1, 1884, and that by Shattuck March 17, 1885, of $119,100.
3. To set aside order entered November 3, 1885, cancelling the bond of Thompson, Payne, and Chancellor, and directing a return of the deposit of $10,000.

332 Waite, *Chief Justice:*

The facts on which these motions depend are as follows: Prior to the entry of the decree of November 17, 1883, an instrument in writing was prepared for the signatures of J. N. Camden, J. H. Carrington, W. H. Beach, A. C. Worth, Toledo National Bank, R. S. Blair, B. B. Valentine, and Heman Loomis, purporting to be a contract between these parties to protect their several interests in the suit and to insure a sale of the property for an amount sufficient to pay the debts due to them, respectively, in full. This paper was signed by Camden, Carrington, Worth, Valentine, and Blair before

the decree was rendered. It has never been signed by the Toledo National Bank nor by Beach. It provided in substance that at the sale under the decree Camden should purchase the property if it sold for a price less than the aggregate of all the claims adjudicated against it, with interest, costs, and expenses; that if such purchase should be made by him the other parties would assign their respective claims under the decree so that they might be used in payment of the purchase-money; that Camden should execute and put on record a declaration of trust to the effect that he would hold and manage the property to the best advantage, without charge for his own time, and apply the rents, issues, and profits to the payment in full of the amount due on the decree in favor of Thompson, of
which he (Camden) was the assignee, and divide the remainder
333 monthly between Loomis and the other beneficiaries in the
proportion of forty per cent. to Loomis and sixty per cent. to the others, until their respective claims were fully satisfied; and that when the debts were all paid Camden was to become the owner of the property free of all claims by the other parties, who were to execute the necessary releases for that purpose. Although the contract refers to the decree as if already entered, in point of fact the entry was not made until after all the parties who have ever signed the contract had affixed their signatures.

The decree, as entered November 17, 1883, directed a sale of the property and an application of the proceeds to the payment, with interest from that date, of the following debts:

1.	William D. Thompson	61,267	79
	Richard A. Storrs	47,663	29
	Heman Loomis	39,476	61

All these debts had equal priority of lien.

2.	James H. Carrington	46,934	58
3.	A. C. Worth	2,650	08
4.	W. H. Beach	2,888	58
5.	Toledo National Bank	9,843	70
	R. S. Blair	593	16

The debts due the bank & Blair having equal priority.

6.	R. S. Blair	592	66
7.	Benjamin B. Valentine	9,056	93
8.	Heman Loomis	49,111	16

The debt to Thompson had been assigned to and was owned by Camden at the time of the rendition of the decree.

334 At the time of the entry of the decree there was a large sum
of money in the hands of the receiver applicable to the payment of the debts, and, with the consent of Thompson (Camden) and Loomis, it was ordered that this be applied, 1, to pay Storrs in full; and, with the assent of Loomis, 2, to pay Thompson (Camden) in preference to him, Loomis. Under this order the following payments were made before May 1, 1884:

Nov. 20, 1883.	To Storrs in full		47,687 12
	" Camden	27,190 93	
Jan. 2, 1884.	" do.	2,000	
March 5, "	" do.	1,500	
April 21, "	" do.	2,000	
			32,690 93

On the 1st day of May, 1884, the property was offered for sale under the decree by the commissioners appointed for that purpose. Camden was present at the sale, as were also the most of the creditors, either in person or by attorney. The president of the Toledo National Bank was there with the others, and, if Camden had purchased the property under the contract, would have assigned the debt due the bank to be and in payment of the purchase-money, upon the terms and conditions provided for in the contract. Blair had also executed an assignment of the debts due him and placed it in the hands of his attorney, who was present, to be delivered to Camden if he purchased under the contract. Camden did not, however, bid at all at this sale, and his reason for not bidding is given in his answer filed in this proceeding in these words:

"Respondent was advised and informed that the debt of Loomis was attacked in this honorable court, and that such proceed-
335 ings were had that, by direction of the court, as to the debt
of said Loomis the amount thereof should be paid into the registry of the said court to await the determination of the proceedings in relation thereto, thus requiring a large sum of ready money to be paid for that purpose, and the said creditors not indicating any willingness to aid your respondent in raising said money, and the respondent, at the time said contract was entered into, not contracting or expecting to be called upon to advance any money upon his bid to purchase under said contract, the said contract not requiring him to do so, respondent was advised that it was not safe for him to bid unless he was prepared to pay at least the amount of the Loomis debts into court. Under this advice respondent declined or refrained from bidding at the first sale of the property on the ground that he might incur a personal liability in bidding under the contract if the amount of the Loomis debt were required to be paid into court to await indefinite litigation."

All the creditors were desirous of having Camden make the purchase under contract, and would have assigned their respective claims to him on the terms provided for if he had so done. Of all this Camden was informed, and, when he declined to buy, some of the other creditors joined together and ran the property up on the bidding to $162,000. This was enough to protect the interest of all the creditors who were bidding, and when Charles H. Shattuck afterwards bid $163,000 the property was struck off to him, no one
offering more; Loomis was not among the creditors who
336 joined in the bidding. Camden was present all the time and
made no objection to what was done.

Shattuck, the purchaser, was the receiver appointed by the court to collect the rents and profits of the property pending the suit. His purchase was made for the benefit of himself, Robert Garrett & Sons, and some others. The others were certain stockholders of the West Virginia Oil & Oil Land Company, who had joined together for that purpose.

Camden was a stockholder and president of the Camden Consolidated Oil Company, a West Virginia corporation, having its principal office in Parkersburgh. He was also a stockholder in the Standard Oil Company. These two companies were more or less connected in business. At some time after the sale, but at what precise time does not appear from the evidence, Camden left this country on a visit to Europe. Before leaving, however, he employed Charles H. Marshall, of Baltimore, said to have been at the time the general attorney of the Camden Consolidated Oil Company, to resist a confirmation of the sale. The ground of his objection to the sale was, as he states in his answer, that as Shattuck was the receiver of the property sold, he stood in such confidential and trust relations to the parties as to prevent him from buying.

On the 10th of June Loomis filed exceptions to the report of sale by the commissioners on the following grounds: 1, inadequacy of price; 2, misleading and doubtful expressions by the court in the course of certain proceedings, the object of which was to set 337 aside or modify decree in favor of Loomis; 3, surprise; 4, incompetency of the receiver to buy; and, 5, uncertainty of the amount to be paid Loomis from the proceeds of the sale. The exceptions were signed by B. M. Ambler as counsel for Loomis.

No other exceptions were taken to the confirmation of the sale. Before the motion for confirmation came on for hearing the secretary of the Camden Consolidated Oil Company opened negotiations with William P. Thompson and Oliver H. Payne, the one a vice-president and the other treasurer of the Standard Oil Company, upon the subject or raising the bid of Shattuck with a view of procuring an order for a resale of the property. Thompson was a stockholder in the Camden Consolidated Oil Company and a brother-in-law of Camden.

The motion for confirmation came on for hearing June 18. When the exception as to the insufficiency of the price was under argument Mr. Marshall or Mr. Ambler was asked by the court whether it was proposed to submit an offer of a larger sum for the property in case a resale should be offered. To this question an affirmative answer was given, and within a short time thereafter a telegram, of which the following is a copy, was received by the clerk:

CLEVELAND, 6, 19, 1884.

To L. B. Dellicker, clerk U. S. court:

If there should be a resale of the West Virginia Oil & Oil Land Co. property under decree of November 17th, 1883, we bind ourselves to bid not less than $173,000, and if knocked down to us to pay therefor.

(Signed) W. P. THOMPSON.
O. H. PAYNE.

338 About the same time the secretary of the Camden Consolidated Oil Company got information from Thompson and Payne that such a telegram had been sent, and he therefore *he* instructed Mr. Marshall to present the offer to the court, which was done. The court thereupon announced its determination to set aside the sale and offer the property again if Thompson and Payne would secure their offer by depositing $10,000 in the registry of the court, and give bond, with approved security, in the penal sum of $250,000, conditioned to that effect. Thompson and Payne having, through their counsel, signified their willingness to comply with the terms proposed, the secretary of the Camden Consolidated Oil Company obtained from Mr. William N. Chancellor, of Parkersburgh, a promise that he would sign the bond as surety. This being satisfactory to the parties, the counsel in the cause set about preparing the form of an entry of the order to be made on the minutes. In doing this some difference of opinion was found to exist as to what would be required of Thompson and Payne under their offer, — acting for Thompson and Payne claiming that it would be enough if they bid the amount offered the next time the property was put up for sale under the decree, while it was inserted on behalf of the creditors that they should be required to repeat their bid every time the property was offered until a sale should be made and confirmed by the court. On application to the court for further instructions in this behalf it was decided that the order should be of the character asked
339 for by the creditors. Thereupon the order was drawn up and
assented to by the parties and approved by the court in the following form:

"This cause came on to be heard on the 18th and 19th days of the present month upon the motion to confirm the sale made by J. B. Jackson and W. L. Cole, special commissioners, under the decree passed and entered in this cause on the 17th day of November, 1883, and upon a petition filed herein by Heman Loomis to set aside the sale of the property of the defendant company made on the 1st day of May, 1884, and upon exceptions taken by the said Loomis to the report of said sale returned to court by said special commissioners, and upon an application made by Wm. P. Thompson and Oliver H. Payne to have the sale set aside, and offering to bid at a resale of the property the sum of $173,000.00 and was argued by counsel.

"Upon the consideration whereof it was, on the 19th day of June (instant) adjudged that all of the objections and grounds of exception assigned by Heman Loomis against the confirmation of the said sale made by said special commissioners to C. H. Shattuck on May 1st be overruled, except the first, and that the said first ground of exception would be sustained, provided that the said W. P. Thompson and Oliver H. Payne should within ten days enter into a bond, with approved security, in the penalty of two hundred and fifty thousand dollars, payable to Lyman B. Dellicker, the clerk of this court, conditioned that at any future sale of said property that may be made by decree in this cause the said Thompson and Payne, or some one for them, will bid the sum of one hundred and seventy-three

340 thousand dollars, and that they will comply with the terms of said decree of sale, in case they shall become the purchasers of said property at said sum of $173,000; and provided further, that the said Thompson and Payne should deposit in the registry of this court within said ten days the sum of ten thousand dollars in cash as additional security for their compliance with the offer made by them, and that the said Loomis shall within the said ten days refund the sum of $143.65 paid by Lavinia H. Austin for advertising, and pay to the purchaser at said sale the sum of $407.50, the same being the interest accruing upon the amount actually paid from the day of sale to the date of this decree."

The form of the entry having been agreed on no further proceedings were had until June 30, when there was presented to the court a bond in the penal sum of $250,000, executed by Thompson and Payne, as principals, and Chancellor, as their surety, conditioned according to the order of the court, and a certified check of the Camden Consolidated Oil Company on the First National Bank of Parkersburgh for $10,000. At the same time the costs and interest specified in the order as agreed on were paid by the same company for Loomis. Thereupon the order which had been approved June 19 was entered on the journal of the court and the first sale set aside and a resale ordered.

Before the bond was signed by Chancellor, the secretary of the Camden Consolidated Oil Company procured for him from Thompson & Payne their individnal bond of indemnity against any liability he might incur thereby. The check for $10,000 was at first deposited by order of the court in the Citizens' National Bank in
341 Parkersburgh, but afterwards it was withdrawn from that bank
and deposited in the First National Bank on interest at the rate of four per cent. per annum. At what precise time this change was made, or on whose application, does not appear.

When all this was done Camden was in Europe. He returned, however, before September 30, and on that day Loomis, through Mr. Ambler, his attorney, served on him, Camden, a notice to buy the property under the contract at the sale to take place the next day, and that unless he did buy or run the property up to the required amount Loomis would hold him responsible therefor. It now appears from a statement made by Camden to the court at the present hearing that before this time an arrangement had been made between him and Loomis for a joint ownership of the property after the other creditors were paid. At what time this new arrangement was made was not stated, and the other creditors were not in any manner affected by it. The effect of it was to change the contract as between Camden and Loomis, so that when the other creditors were paid out of the rents and profits the property would be owned two-thirds by Loomis and one-third by Camden.

The property was again offered for sale on the first of October, and Camden came to the place when the sale was to be made before the bidding began. After his arrival he went to the auctioneer who had been employed to cry the sale and told him he would bid

$173,000 for the property as the agent of Thompson & Payne. The sale was then opened by the auctioneer and this bid was cried for
some little time; Camden then bid $173,050. This bid was
342 also cried, and no one offering more the property was struck
off to Camden at that price. When he made the bid he did not state that he was acting for any one but himself, or that he was buying under the contract, or that he expected to pay for the property otherwise than in money. After the sale was closed the commissioners went with him to his office to get the money. On their arrival there Camden produced the contract and asked that it be accepted in lieu of money. This the commissioners declined to do, as there instructions were to sell for cash only. At this interview Camden did not intimate that if the court declined to give effect to the contract he would not pay the money, but on the contrary told the commissioners that if required to do so he would complete the payment in that way. He was, however, anxious to have the return of the commissioners show his offer of the contract in lieu of money and not his offer of money, so that he might, if possible, secure a purchase under the contract. To this the commissioners did not object, and accordingly in their return, after setting forth the sale, they state that "Camden did not and has not paid to your commissioners the sum of money so bid and offered by him for said property as aforesaid or any part thereof, but when your commissioners required the cash from said Camden, pursuant to the terms of sale, he tendered to us a paper purporting to be a copy of a contract" (here follows a general description of the contract before referred to). "Said copy of the contract, with a paper thereto attached signed by Heman Loomis, by B. M. Ambler, his attorney, having
date September 30, 1884, is herewith filed. Your commis-
343 sioners declined to receive the said contract in payment, in
whole or in part, of the purchase-money so bid by said Camden for said property, or to accept anything in payment thereof except lawful and current money of the United States, and this the said Camden has not as yet paid."

Mr. J. B. Jackson, one of the commissioners, went to Wheeling after the sale was closed, and the next day, October 2, Camden telegraphed him at that place as follows:

PARKERSBURGH, *Oct.* 2, 1884.

To Gov. J. B. Jackson:

Please see that my bid is reported as based solely on the contract presented in payment, without any qualification or condition that would affect me personally on my bid.

(Signed) J. N. CAMDEN.

Mr. Cole, the other commissioner, and who was one of the counsel for the other creditors, resided at Parkersburgh, where Camden was, but no similar communication was made to him.

The report of the sale was filed with the clerk on the 4th of October, and on the 6th day of the same month Camden filed in court a petition setting up the contract and the demand which had been made on him before the sale, and praying "that, the premises being considered, he may be allowed to apply the claims and debts adjudged by said decree in discharge of his liability for the purchase-money; that his compliance with the terms of said contract may be considered and decreed a compliance with the terms of said sale; that the said contract may be received in discharge of his bid; 344 that the sale be confirmed and that a deed be made to your petitioner for the said property, and that the court will make such further order and decree and grant such other general and further relief in the premises as your honors may deem right—as in equity may be proper; and as in duty bound, &c., he will ever pray, &c."

This petition is signed by Mr. Caleb Boggess, one — the attorneys of this court, as counsel for Camden. In the petition it is stated that Camden is "largely interested to have the contract conformed and executed, and that he desires that the same may be done." The manner in which he is interested does not appear except by the contract, and no mention is made of any new arrangement with Loomis. To this petition answers have been filed by all the creditors except Loomis, objecting to the relief asked by Camden.

On the 14th day of October, Carrington, Worth, Beach, Blair, The Toledo National Bank, and Valentine filed exceptions to the report of sale on the ground that the purchase-money had not been paid, and "prayed that said report be recommitted to said commissioners with direction that unless the said Camden do at once comply with the terms of sale by paying to said commissioners the sum of $173,050 that said real estate and property may be resold at the risk and costs of the said Camden." Upon the filing of this petition the following order was made by the court:

345 "And it appearing to the court that at the sale of said property on the 1st day of October, 1884, held pursuant to said decree, J. N. Camden became the purchaser of said real estate and property for the sum of $173,050.00, and that he has failed to comply with the terms of sale by paying said sum of money or any part thereof to said commissioners or into the registry of this court; thereupon, on motion of the said defendants, Carrington, Beach, Worth, Blair, Toledo National Bank, and Valentine, a rule is awarded against J. N. Camden, returnable on the 3d day of November, 1884, to show cause, if any he can, why he should not pay to said commissioners or into the registry of the court said sum of $173,050.00 so bid by him for said property as aforesaid, or why said sale should not be set aside and said real estate and property resold by said commissioners at the risk and costs of said Camden."

On the 3d of November the parties all appeared in person or by counsel, and the court not being able to take up the motions at that time, the further hearing was postponed until December 2. At that time Camden was represented by his counsel, Mr. Boggess. The order postponing the hearing was made in the forenoon of the day. During the afternoon of the same day Mr. Boggess, who had been employed by the secretary of the Camden Consolidated Oil Company to act as attorney for Thompson & Payne, appeared in court

and moved for a cancellation of their bond and a return of their bond and a return of their deposit of $10,000, with the interest which had accrued thereon. Neither at that time or at any time or at any
346 time before had it been intimated to the court that if the prayer of the petition of Camden was not granted he would not promptly pay the full amount of his bid in money. On the contrary, the recollection of the judge holding the court at the time is distinct that it was expressly stated, either in the forenoon or the afternoon or both, that the bid of Camden was *bona fide* and would be paid in money if required. Under these circumstances, as Camden was known to be able financially to pay the money if an order to that effect was made, the following entry was directed by the court:

"This day came William P. Thompson and Oliver H. Payne and moved the court to release their surety, W. N. Chancellor, from the obligation of their bond in the penalty of two hundred and fifty thousand dollars, dated the 21st day of June, 1884, conditioned to bid, at a future sale of the property directed by a decree in this cause to be sold, the sum of one hundred and seventy-three thousand dollars, and filed in this court in this cause, on the 23d day of June, 1884, pursuant to a decree rendered therein on the 19th day of June, 1884; and also moved the court to make an order directing that the sum of ten thousand dollars, deposited by them in court in this cause on the 23d day of June, 1884, pursuant to the last abovenamed decree, together with the accrued interest thereon, be refunded to them; and it appearing to the court from the report of Commissioners J. B. Jackson and W. L. Cole, filed in this cause on the 4th day of October, 1884, that the said Thompson and Payne did in all respects comply with the conditions of said bond,
347 and that at said sale a higher bid than they undertook to make was made by J. N. Camden, which has been reported and accepted by the said commissioners, it is therefore ordered that the said bond be cancelled and the parties thereto released therefrom; and it is further ordered that the said sum of ten thousand dollars so deposited by them, together with the interest that has since accrued thereon, be refunded to the said Thompson and Payne out of the registry of the court. It is further ordered that L. B. Dellicker is entitled to receive a commission of one per cent. on the amount so received and refunded, to be taxed in the bill of costs, and the receiver is ordered — pay the same out of any funds in his hands."

When this order was made none of the creditors interested in the proceeds of the sale were present, in person or by attorney, and they had no notice that any such application was to be made. The next day a check was made by the clerk and properly countersigned by the judge on the First National Bank to the order of the Camden Consolidated Oil Company for $10,098.28, the amount of the deposit and the accrued interest thereon, and delivered to the secretary of the Camden Consolidated Oil Company, who gave a receipt therefor, as follows:

Received, Parkersburgh, Nov. 4th, 1884, from L. B. Dellicker, clerk U. S. district court, the sum of ten thousand and ninety-eight $\frac{29}{100}$ dollars, money deposited by Payne & Thompson in case Mayhew *et al. vs.* W. Va. O. & O. L. Co.

CAMDEN CONSOLIDATED OIL CO.,
L. A. COLE, *Sec'y.*

348 The clerk, however, required a receipt from Thompson & Payne, and this the secretary agreed to get. Afterwards he obtained and delivered to the clerk such an instrument, a copy of which is as follows:

"Received of L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, ten thousand and ninety-eight $\frac{89}{100}$ dollars, being in full for ten thousand dollars, with accumulated interest, heretofore deposited — William P. Thompson and O. H. Payne under an order of said court in the case of F. L. B. Mayhew & Co. *vs.* The West Virginia Oil & Oil Land Company and others, passed on the 19th day of June, 1884, and which is now, with its accumulated interest, directed to be returned to the said W. P. Thompson and O. H. Payne by an order of said court in the same passed on the 3d day of November, 1884.

$10,098.89.

(Signed) W. P. THOMPSON.
O. H. PAYNE.

As soon as the order for the cancellation of the bond was entered the secretary of the Camden Consolidated Oil Company took a copy and presented it to Chancellor, who thereupon surrendered to him the indemnifying bond of Thompson & Payne. This bond the secretary afterwards returned to Thompson & Payne. In all these transactions Thompson & Payne were represented by the secretary of the Camden company, and they never at any time appeared in person.

349 On the 21st of November Carrington, Worth, the Toledo National Bank, Valentine, and Blair, having heard of the order cancelling the bond and surrendering the deposit, filed a petition to have that order set aside, and on the 2nd of December the court made an order in reference thereto, as follows:

"This day came James H. Carrington, A. C. Worth, William H. Beach, the Toledo National Bank, Benjamin B. Valentine, and Robert S. Blair, by W. L. Cole, their attorney, and moved the court to set aside the order made in this cause on the 3d day of November, 1884, returning to Oliver H. Payne and William P. Thompson the ten thousand dollars heretofore deposited by them in the registry of this court and cancelling their bond in the penalty of $250,000.00, with Wm. N. Chancellor as surety, according to the prayer of their petition filed in this cause; and it appearing that notice of this motion and of the filing of said petition has been given to the said Oliver H. Payne and William P. Thompson and W. N. Chancellor, it is ordered that this motion be placed on the docket and the consideration thereof is continued until a future day of this court."

This petition was filed and the entry therein made during the term in which the order of cancellation was granted, but the matter was not disposed of before the adjournment; it, therefore, went over to the next term, which is the present term, as unfinished business.

On the 22nd of January, 1885, and during the present term, the motions connected with the sale of October 1, 1884, all came on for hearing, and the decision in reference thereto appears in the following order, which was then made:

350 "This cause came on to be heard at the present term upon the report of J. B. Jackson and W. L. Cole, commissioners heretofore appointed to make sale of the property mentioned in this cause, filed on the 4th day of October, 1884, whereby it appears that J. N. Camden bid the sum of one hundred and seventy-three thousand and fifty dollars for said property when it was offered for sale by said commissioners at public auction on the 1st day of October, 1884, pursuant to the former decree of this court passed in this cause, and that said commissioners accepted the bid of the said Camden, but that he has not complied with the terms of said sale by paying to said commissioners the amount of said bid or any part thereof. Upon consideration of said report and the exceptions filed thereto by several parties to this suit, and the rule heretofore awarded against said Camden to show cause why said property should not be resold at his cost and risk, and the petition of the said Camden treated and considered as his answer to said rule, and the answers to said petition filed by the exceptors to said report and the argument of counsel for said Camden and the said exceptors; and the said Camden still failing to comply with the terms of said sale by paying the amount of his said bid in cash, it is, this 22nd day of January, 1885, considered and ordered by the court that said petition and answer of said Camden is not a defense to said rule. It is further ordered that the exceptions to said report be, and the same are hereby, sustained and the said sale is set aside, and the said commissioners will proceed at once to advertise and resell said property in accordance with the terms and provisions of said former decree passed in this cause on the 17th day of November, 1883, for cash, which sale will be made at the costs of said Camden, and if the said property shall be sold for a less sum than one hundred and seventy-three thousand and fifty dollars, the said bid of the said Camden, the court reserves for further determination in this cause the question whether the said Camden will be required to pay the deficiency."

351 Under this order the property was again offered for sale on the 17th of March and sold to Charles H. Shattuck for $119,100, he being the highest and best bidder. The purchase-money was paid at the time of the sale and is now in court.

After this sale was reported to the court, the Toledo National Bank, Valentine, and Blair filed their petition asking that before the sale should be confirmed the court would, if necessary, modify its order of January 22 so as to hold Camden on his bid, or for the deficiency between his bid and that of Shattuck, and to require Camden to take the property at his bid, and if he failed to do so to confirm the sale to Shattuck, unless Thompson, Payne, and Chancellor elected to take and pay for the property at their bid of $173,000. The same parties also filed exceptions to the report, the object of which was to secure the same action which was asked for in the petition. Camden filed, 1, a motion to strike this petition from the files, and, 2, an answer without prejudice to this motion.

Loomis has also filed a petition to the same general effect, and with substancially the same prayer. In this petition the following averment is made:

XI. "The commissioners offered said property again on the 17th day of March, 1885, at which time some arrangement had been made by which the *the* interests of the Standard Oil Company and the parties represented by Receiver Shattuck had been settled on a basis not known to your petitioner, under which the property was to be bought at the lowest figure at which it could be got, and Mr.
Robert Garrett, whom Mr. Shattuck formerly as now repre-
352 sented, in part at least, and who had been the real party on the
first bid of $163,000, had some tacit or express direct or indirect, understanding with Mr. Camden and his friends whereby the property should be bought for a low figure and without competition between them, and the said Camden now desires this sale to be confirmed at $119,100, and pretends that he is not liable on his bid of $173,050.00.

To this Camden answered as follows: "Respondent denies that any such arrangements were entered into as set out in charge 11 of said petition, but refers to his answer hereinbefore referred to and relies upon the same as his answer to this charge, so far as said answer is responsible thereto." The answer "hereinbefore referred to" is that filed to the petition of the other creditors, and the part of it which is responsible to this allegation of Loomis is as follows: "Respondent admits that the property being large and valuable, and the probable amount for which said property would sell being large, that the sale being for cash would be more than any one individual would be willing to raise and invest in that character of property, and that certain persons, some of whom are named in the petition, did agree to join in the purchase of said property, and if the property was so purchased by them that they would form a corporation to own and work said property.

"Respondent denies that there was any combination or intention on his part to beat down the price of said property or to procure the same for less than its fair cash value; on the contrary thereof,
said arrangement was entered into *bona fide* to compete for
353 the purchase of said property and to bid for the same to the
fair value thereof; and respondent states, as his opinion and belief, that without such an arrangement the property would not have brought as much as it did at that sale.

"Respondent avers that none of the parties were interested in any of the liens upon said property, except the Thompson debt represented by himself; that many of the other lien creditors were present at said sale, as he is informed, and that others were present by counsel;

that the sale was fair and open, and ample opportunity afforded to all interested to bid for the same; and, to the best of his information, from the present condition and character of the property, the same was sold for all it would bring, and more than it would now probably bring upon another resale."

Since the first day of May, 1884, there has been paid to Camden by the receiver the following sums to apply on his claim as assignee of Thompson:

January	3,	1885	2,000
"	30,	"	7,000
February	27,	"	1,500
March	16,	"	809 07

354 About these facts there is but little, if any, dispute, and I have no hesitation in holding that Camden, by his purchase at the sale of October 1, 1884, became personally bound for the payment of the price in money, or its equivalent. The bid of Thompson and Payne must be taken to have been *bona fide*, for they were under bonds to make it. When Camden bid over them he gave no notice that he expected to pay otherwise than in money. He does not pretend that he had then or now any arrangement of the claims payable out of the purchase-money, except that of Thompson, and perhaps that of Loomis, unless the alleged contract was sufficient of itself for that purpose. This contract was not signed by all the parties named in it, and there is nothing to indicate that any were to be bound until the execution by all was complete. When the property was first put up for sale Camden was as much bound to the contract as he ever has been, but he then designedly refrained from bidding, and allowed a purchaser to buy at a price far below what, if the contract was in force, he should have offered. This made it necessary for the other creditors to resort to other means for the protection of their interests, and some of them did so. In this way a sale was secured for an amount in cash sufficient to pay all in full except Loomis. Camden afterwards saw fit to resist the confirmation of the sale, and for that purpose he joined with Loomis. All the other creditors were in favor of the confirmation. In the
355 exceptions which were filed in the name of Loomis no mention was made of the contract, and it was not intimated at the hearing in any way that the purpose of the contestants was to give Camden another opportunity to buy under the contract. All parties, as far as appearances were concerned, treated the contract as no longer an element in the case. The sale was finally set aside because of inadequacy of price, which was shown by an advance cash bid from other responsible parties.

Camden now claims, in his answer to the petitions filed against him, that the decree of November 17, 1883, was entered up by consent of parties in a different form from what it would have been were it not for the contract, but there is no proof of that fact, and he himself does not state what these changes were. So far as appears from the face of the decree the only consents were those of Thompson (Camden) and Loomis that Storrs should be paid first from the moneys in the hands of the receiver, instead of *pro rata* with them, and that of Loomis that Thompson (Camden) should be next paid in full before anything was distributed to him; but by the terms of the contract Thompson (Camden) was to be paid in full from the earnings of the property before Loomis was entitled to anything. I am unable to see how Camden has lost anything by his consent to the decree.

In his answers Camden states as his excuse for not bidding at the first sale that some uncertainty then existed as to his right to use the Loomis debt as money to pay for the purchase, but the
356 same difficulty existed when he bought in October. No
change had been made as to that part of the case between the first sale and the second to relieve Camden from embarrassment in this particular. All he says on that subject in his answer is that "the proceedings attacking the debt of Loomis were dismissed, or so modified by the opinion or action of the court in entering decree ordering a resale under said former decree that respondent was advised and believed that the obstacles to his bidding under said contract were substantially removed." He *parts* entirely to state what that modification was, and I can discover nothing in the order to which such an effect can be given.

Under these circumstances it is clear to my mind that Camden could not use the alleged contract in lieu of money to pay his bid. The claims of the different creditors had not been assigned to him, and he was in no condition to call on a court of equity to require the creditors to make such assignments. As the contract was not available to him for the purposes of payment it was incumbent on him to pay in money.

The liability of Camden originally for the payment of his bid in money on the confirmation of sale having thus been established, the next enquiry is whether in the proceedings since his bid anything has been done to release him from that liability. In his answers he states his claim as to this part of the case in these words: "Respondent is advised by counsel that the court having refused to confirm said sale at the bid so made by respondent, and in in-
357 tering the decree ordering a resale of said property that all
liability on the part of the respondent for such deficiency was determined and respondent discharged therefrom; that respondent was not liable as purchaser at sale until the court had accepted the bid of respondent and confirmed the sale absolutely." And in another place, "Respondent, however, submits that by said decree of resale he was discharged from further liability upon his bid of $173,050, there being no acceptance of said bid by the court and a confirmation of said sale, which respondent is advised were necessary to charge him under said bid."

It is true, as was contended in argument, that in chancery a bidder at a sale by a master under a decree of court is not considered a purchaser until the report of sale is confirmed, and that he cannot be compelled to complete his purchase until the confirmation of the report—that is, until his bid has been in some form accepted by the court, as the court stands in the place of a vendor, using the master to receive and report the bids. Sug. on V. & P., 3d Lond. Ed., 38, 39; 1st Am. Ed., 33. Under the old English practice an order *nisi* was first entered as of cause, and this was afterwards made absolute also of cause, unless cause was shown to the contrary. The purpose of the whole proceeding was to show that the court accepted the bid and made the sale. Sug. on V. & P., 39, *supra*.

In the present case the commissioners reported the sale in due form, and Camden asked the court to take his alleged contract in lieu of money and confirm the report. The creditors in interest 358 adverse to his petition asked that he be required to pay in money and for a confirmation on that basis. No one else appeared to resist. There was no dispute about the regularity of the proceedings at the sale or the sufficiencies of price or the title to the property. The difficulty was not as to the sale, but as to how it should be paid for. Camden did not ask to be released from his purchase because of a misunderstanding as to his rights, but only that he might be allowed to pay the price in a particular way. The creditors did not ask to have the sale set aside if the money was paid, and to get the money they obtained a rule on Camden. The defense of Camden to this rule was not that he could not be required to pay because the sale had not been confirmed, but in effect that, as by the terms of a contract he claimed to have with the creditors, he would be entitled to the money when paid in, the contract should be taken in lieu of the money to avoid unnecessary circuity of action. When, therefore, under these circumstances, the court decided that Camden must pay in money, it in effect confirmed the report of the sale and required him to act accordingly. The order which was entered at the time may not have been expressed with precise technical accuracy, but its meaning is clear. The sale was confirmed on the basis of a bid for cash, no other having been made, and, as the money had not been paid, a resale was ordered at the cost of Camden, leaving the question open whether it should be at his risk. It is true that in the order this language occurs: "It is further ordered that the exceptions to said report be, 359 and the same are hereby, sustained and the sale set aside, and the said commissioners will proceed at once to advertise and resell," &c. But this, when taken in connection with the rest of the order, was clearly intended only as a provision to relieve the subsequent sale from embarrassment by reason of the former one to Camden, and not to discharge him from liability for a deficiency between his own bid and any that might be accepted by the court under the resale which was ordered. Camden had full notice that the purpose of the court was to charge him for a deficiency if upon further enquiry it should be found he was liable. No room whatever was left for a misunderstanding on that subject. As the order of January 22 was made during the present term it is still under the control of the court, except so far as the rights of third persons have intervened. The answers of Camden satisfy me that he is interested, directly or indirectly, in the present purchase by Shattuck. For this reason I am not inclined to consider Shattuck as having an interest which will interfere with the right of the court to make such modification of that order as may now seem to be just.

I am also satisfied that the order of November 3, 1884, cancelling the bond of Thompson, Payne & Chancellor was made under a misapprehension of the facts and ought to be vacated.

It is therefore ordered that Camden elect here and now whether he will take the property at his bid of $173,050 and pay for
360 it in money. If he will, and he makes his payment within a reasonable time, to be fixed if required, the sale to Shattuck will be set aside, and that to him on the 1st of October, 1884, carried into effect by proper orders.

If Camden does not elect to take the property, it will be ordered that he now, as the agent who made the bid for Thompson & Payne on the 1st of October, elect for them whether they will take the property at $173,000 and pay for it in money. If he does so elect a reasonable time will be given them to make the payment and the proper orders made to perfect a transfer of the property to them under their bid of October 1, 1884.

Should neither Camden nor Thompson & Payne elect to take the property under these orders the sale to Shattuck will be confirmed and a personal decree rendered against Camden for the deficiency. The order of November 3, 1884, cancelling the bond of Thompson, Payne, and Chancellor will also be vacated.

Bond, J., concurs.

361 On the 6th day of June, 1885, the following order was made and entered of record, to wit:

F. L. B. Mayhew & Co.
vs.
The West Virginia Oil & Oil Land Company & Others. } In Equity.

This day came Johnson N. Camden, by J. B. Jackson, his solicitor, and moved the court to lessen the amount of the appeal bond required by the order entered this day granting to him an appeal and supersed*ae*s to the decree entered in this cause; to the granting of which motion the court takes time to consider thereof.

And, on the 11th day of June, 1885, the following order was made and entered of record, to wit:

F. L. B. Mayhew & Co.
vs.
The West Virginia Oil & Oil Land Company & Others. } In Equity.

Upon a motion of Johnson N. Camden, entered in this court on the 6th day of June, 1885, to reduce the penalty of the bond required by the decree entered in said cause allowing an appeal and supersed*ae*s to said decree, this day came the said Johnson N. Camden,

by J. B. Jackson, his solicitor, as also the several creditors
362 interested in the decree appealed from by W. L. Cole and
B. M. Ambler, their solicitors; and the matters arising on said motion having been fully heard and considered by the court—

It is, therefore, ordered that the motion of the said Camden be allowed, and that the penalty of the appeal bond heretofore required be lessened, and that in lieu of the penalty of said bond required by the order allowing said appeal hereinbefore entered that the same be now fixed at two hundred thousand dollars, and that upon the execution and approval of said bond in the sum of two hundred thousand dollars the appeal heretofore allowed is to stand and be continued in full force and effect.

And it having been suggested to the court that, by reason of the several different interests involved in said decree appealed from, it would be proper to make said appeal bond payable to the clerk of this court for the benefit of all of said parties in interest, it is further ordered that said appeal bond so to be executed by the said Johnson N. Camden in perfecting his said appeal be made payable to Lyman B. Dellicker, clerk of the circuit court of the United States for the district of W. Va., in trust, for whom it may concern; all of which is ordered accordingly.

363 And on another day, to wit, the 15th day of June, 1885, the following bond was filed in the clerk's office, to wit:

Know all men by these presents that we, Johnson N. Camden, William P. Thompson, George W. Thompson, and William N. Chancellor, are held and firmly bound unto Lyman B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, in trust, for whom it may concern, in the full and just sum of two hundred thousand dollars, to be paid to the said Lyman B. Dellicker, clerk, &c., in trust, for whom it may concern, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this thirteenth day of June, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas, lately at a circuit court of the United States for the district of West Virginia, in a suit depending in said court between F. L. B. Mayhew, & Co. and others and the West Virginia Oil & Oil Land Company and others, a decree was rendered against the said Johnson N. Camden, on the 15th day of May, 1885, which was entered on the 6th day of June, 1885, and the said Johnson N. Camden having
obtained an appeal and filed a copy thereof in the clerk's
364 office of the said court to reverse the decree in the aforesaid
suit, and a citation directed to the said F. L. B. Mayhew & Co. and others, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligations is such that if the said Johnson N. Camden shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

JOHNSON N. CAMDEN. [SEAL.]
W. P. THOMPSON. [SEAL.]
GEO. W. THOMPSON. [SEAL.]
W. N. CHANCELLOR. [SEAL.]

Approved as a superseda*es* bond.
June 15, 1885.

J. J. JACKSON,
Dist. Judge.

365 I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do certify that the foregoing are true copies from the records and files in my office in the case of F. L. B. Mayhew & Co. *vs.* The West Virginia Oil and Oil Land Company and others, upon an appeal to the Supreme Court of the United States by J. N. Camden, so far as ordered by appel-ant's atterney.

In testimony whereof I hereunto set my hand and the seal of said court, at Parkersburgh, in said district, this 7th day of September, A. D. 1885.

{ Seal Circuit Court United States,
District West Virginia, Parkersburgh, W. Va. }

L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

Endorsed on cover: West Virginia C. C. U. S. No. 650. Johnson N. Camden, appellant, *vs.* F. L. B. Mayhew & Company *et al.* Filed October 7, 1885.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 650.

JOHNSON N. CAMDEN, APPELLANT,

vs.

MAYHEW & COMPANY, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Comes the appellant and states and shows that the real and only matter in controversy in this appeal is whether he shall be held personally for the difference between his bid at the sale of the property mentioned in the record, of $173,050, made October 1, 1884, and that of Shattuck, made March 17, 1885, at another sale of such property, of $119,100, and there is no dispute that the amount of Shattuck's bid is properly distributable among the creditors as named in the record, and such creditors have agreed with appellant for that sum to be distributed, as will be seen by the paper herewith filed and made part of this motion, XI.

But appellant is advised it is necessary to have the supersedeas herein, as to that sum, vacated before any steps can be taken in the court below for the distribution of that fund now in the hands of the officer of the court below, and to that appellant hereby consents without prejudice to his appeal in any respect, as to the amount of the difference between the two bids as aforesaid.

Wherefore he moves the court to vacate the supersedeas herein to the extent aforesaid, and to dismiss the appeal to the same extent, and that the same be certified to the court below for the purposes aforesaid.

A. H. GARLAND,
Attorney for Appellant.

As the record in this case has not been printed, I beg to refer the court to 24 *Vol. Federal Reporter, p.* 205 *et seq.*, for the facts necessary to an understanding of this motion.

A. H. GARLAND,
For Camden.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FRANCIS L. B. MAYHEW AND OTHERS, Partners under the Firm-name of F. L. B. Mayhew & Co.,

vs.

THE WEST VIRGINIA OIL AND OIL LAND COMPANY, RICHARD A. Storrs, William D. Thompson, Heman Loomis, James H. Carrington, William H. Beech, A. C. Worth, Benjamin B. Valentine, Robert S. Blair, and The Toledo National Bank.

It is stipulated by the parties to this suit who still have an interest therein that the funds in the registry of the court to the credit of this cause may be disbursed, and the purchase of the property of the defendant corporation be let into possession thereof, and a deed of conveyance executed to him by the commissioners in like manner and with the same effect as though no appeal had been taken from the decree made herein on the 15th day of May, 1885.

It is further stipulated that the said circuit court may proceed to hear and determine all questions touching the distribution of said funds as though said appeal had not been taken.

Nothing contained in this stipulation shall prejudice or in any way effect the right of Johnson M. Camden in the prosecution of his appeal from said decree of May 15th, 1885, but said appeal may be prosecuted, heard and determined in all things as though this stipulation had not been made.

(In triplicate) FRANK R. PAYNE,
Receiver of Adrian Savings Bank and
Assignee of Heman Loomis.
J. H. CARRINGTON.
BENJ. B. VALENTINE.
A. C. WORTH.
WM. H. BEACH.
ROB'T S. BLAIR.
TOLEDO N'L BANK,
By COLE & COLE, *Solicitors.*

COLE & COLE,
Solicitors of Record for all the Foregoing Parties.

Office Supreme Court U. S.
FILED.
MAR 15 1886
JAMES H. McKENNEY,
CLERK.

Supreme Court of the U. S.

October Term, 1885.

JOHNSON N. CAMDEN, *Appellant*,
vs.
THE WEST VIRGINIA OIL AND OIL LAND COMPANY, JAMES H. CARRINGTON, AND OTHERS, *Appellees*.

1028

Upon an appeal from a decree of the Circuit Court of the United States for the District of West Virginia, made on the 15th day of May, 1885.

MOTION TO DISMISS THE APPEAL.

And now come James H. Carrington, A. C. Worth, William H. Beach, The Toledo National Bank, Benjamin B. Valentine, Robert S. Blair and Heman Loomis, appellees in the above causes by their attorneys, and move the court to dismiss the appeal in the above cause as to all parts of the said decree appealed from, except that part thereof, which decrees that the appellant is liable for, and that he do pay into the registry of the court the sum of $53,950, with interest thereon from the date of the decree and costs.

C. C. COLE,
W. L. COLE,
Attorneys for Appellees.

Motion to Vacate Supersedeas.

And now come the said appellees by their attorneys and move the court to vacate the supersedeas as to all parts of said decree appealed from except that part thereof which decrees that the appellant is liable for, and that he do pay into the registry of the court the sum of $53,950, with interest thereon from date of the decree and costs.

C. C. Cole,
W. L. Cole,
Attorney's for Appellees.

Notice.

To John E. Kenna,
Attorney for the Appellant.

You are hereby notified that on the 15th day of March 1886, the undersigned will make two motions before the Supreme Court of the United States, one to dismiss the appeal, the other to vacate the supersedeas in the above named cause as to all parts of said decree appealed from, except that part of the decree requiring the said Johnson N. Camden to pay into the registry of the court the sum of $53,950, with interest from date of the decree and costs. A copy of each of said motions and the brief in support tnereof are hereto attached.

C. C. Cole,
W. L. Cole,
Attorney's for Appellees.

Brief in support of the foregoing Motions.

I.

The motion to dismiss the appeal ought to be granted because the appellant was not a party to the cause so as to entitle him to appeal from the whole decree.

The decree adjudicates three distinct matters. (See Appendix, p. 9-13.)

First. That Thompson and Payne are liable upon their bond filed by them in the cause in June, 1884, as one of the conditions upon which the court opened the biddings for the property of the defendant corporation.

Second. That the sale of said property to Charles H. Shattuck for $119,100, made March 17th, 1885, be confirmed, and the proceeds thereof disbursed according to the terms of a former decree.

Third. That Johnson N. Camden is liable for and that he do pay into the registry of the court the sum of $53,950, the difference between the amount of his bid for the property in Oct., 1884, and the sum for which it was sold to Shattuck in March, 1885.

At the sale of the property made on the 1st of October, 1884, under the decree theretofore made, Mr. Camden ,who was not a party to the suit, was a bidder and became the purchaser of the same for $173,050. He filed his petition in the cause praying a confirmation of the sale to him as trustee for the creditors mentioned in the decree of sale, by virtue of a contract which he claimed to have made with them. (See Appendix, p. 17-25.) All the creditors except one resisted the petition of Camden, insisting that he had no authority to bid for them, and that he did not so bid, but that he bid in his own right and was liable upon his bid to take the property and pay cash therefor according to the terms of the decree of sale.

On the 22nd of January, 1885, the court refused the prayer of Camden's petition, and he still failing to pay the amount of his bid in cash, a resale of the property was ordered at his cost, reserving the question of his liability in case, at the resale, the property should sell for less than the amount of his bid. (See Appendix, p. 25,-27.)

The resale was made March 17th, 1885, and Charles H. Shattuck was the purchaser for $119,100, which sale was confirmed by the court by decree made May 15th, 1885; and at the same time and by the same decree Camden was held to be liable for and ordered to pay the sum of $53,950, the difference between the sum bid by him in Oct., 1884, and the sum for which the property was sold to Shattuck in March. 1885. From this decree Camden appealed. (See Appendix, p. 13-15.)

He was not a party to the suit so as to entitle him to appeal from the decree confirming the sale to Shattuck and disbursing the proceeds.

Farmers Loan & Trust Co. v. Waterman, 106 U. S., 265.

"An appeal brings up for review only that which was decided adversly to the appellant" (Louden v. Taxing District, 104 U. S., 771.

The decree in respect to the liability of Thompson and Payne does not affect Mr. Camden, and that part of the decree can be considered only upon an appeal by them.

Malerin v. U. S., 1 Wall., 287.

Neither does the decree confirming the sale to Shattuck affect Mr. Camden. No exception was taken by him to the report of the sale, no objection was made to its confirmation. There was no dispute as to the amount for which Mr. Camden was liable, if liable at all. The whole controversy, so far as Mr. Camden is concerned, was whether he could be held upon his bid for the property.

Not only did he fail to except to the report of sale to Shattuck, but he admitted that he was interested with him in the purchase, and to secure the confirmation of the sale represented to the court that Shattuck's bid of $119,100 was all the property was worth and more than it would probably bring at another sale.

Any questions that he might have raised, as to the sale to Shattuck, was thus waived, and are not presented by the record. He elected to take an interest with Shattuck in the purchase, procure the confirmation of the sale to him, and abide by the decision of the court upon the question of his liability on his bid at a former sale. This is the only question that can be presented by his appeal.

Crawshay vs. Soutter et al., 6 Wall, 740.

Attention is especially called to the following allegations contained in the answers of Mr. Camden to the petitions filed by the appellees, being the petitions and answers referred to in the decree appealed from:

" Respondent is advised by counsel that the court having refused to confirm said sale at the bid made by respondent, and in entering the decree ordering a re-sale of said property that all liability upon the part of respondent for such deficiency was determined, and respondent discharged therefrom." [See appendix p. 31.]

"Respondent, further answering, says that he is advised that by reason of the refusal of the court to confirm said sale to him, and decreeing a re-sale of said property, that he is not liable to take the said property and pay cash for the same at his bid of October, 1884; and that this Honorable Court ought not to so decree; that said property has been again offered for sale and purchased by Charles H. Shattuck, the purchaser at the first sale, and that the rights of third parties have intervened entitling them to the property, unless, said sale should be set aside for some one of the reasons entitling a Court of Equity to interfere—which reasons respondent respectfully submits does not exist." [See appendix p. 42.]

"Respondent admits that the property being large and valuable, and the probable amount for which said property would sell being large; that the sale being for cash, would be more than any one individual would be willing to raise and invest in that character of property. And that certain persons, some of whom are named in the petition, did agree to join in the purchase of said property.

Respondent denies that there was any combination or intention on his part to beat down the price of said property or to procure the same for less than its fair cash value, on the contrary thereof said arrangement was entered into *bona fide* to compete for the purchase of said property and to bid for the same to the fair value thereof, and respondent states as his opinion and belief that without such an arrangement the property would not have brought as much as it did at that sale.

Respondent avers that none of the parties were interested in any of the liens upon said property, except the Thompson debt represented by himself, that many of the other lien creditors were present at the said sale, as he is informed, and that others were present by counsel, that the sale was fair and open and ample opportunity afforded to all interested to bid for the same, and to the best of his information from the present condition and character of the property, the same was sold for all it would bring, and more than it would now probably bring upon another re-sale." [See appendix p. 32-33.]

Upon the record as it stood at the time of the passage of this decree, the court might with the property have confirmed the sale to Shattuck, and ordered distribution of the proceeds, reserving for future consideration the question of Camden's liability for the difference between the amount of his bid and the amount for which the property finally sold. From such decree it is clear Camden could not have appealed. It would not have affected him.

If it be suggested that, as a purchaser at the sale held in October, 1884, Mr. Camden's rights are affected by the confirmation of the subsequent sale to Shattuck, it is sufficient to reply that his pretentions as such purchasers were fully presented to the court, litigated, considered and finally determined by the decree of Junaury 22, 1885, from which decree he has never prayed an appeal. That decree is a final decree, as to the right claimed by Camden to purchase for the creditors, and he might have appealed from it if he had so desired. Blossom vs. R. R. Co, 1, Wall. 655.

This case is distinguished from the case of Butterfield vs. Usher 91, U. S. 246. The refusal to confirm the sale to Butterfield in that case was not final. The court did not deny his right to purchase the property. He might be a bidder and purchase the property at a subsequent sale. But, the decree of January 22, 1885, was a final adjudication of the right asserted by Camden to purchase the property by virtue of his alleged contract with the creditors. In effect the prayer of Camden's petition was refused, and the petition dismissed, and he was held in court, upon the rule which had been awarded against him, until the sale of the property could be made for cash so that in the event of the property selling for less, the court might consider whether he would not be personally liable for the deficiency.

In order to review this decision there must be an appeal from that decree. See Savannah vs. Jessup, 106, U. S. 563.

In the language of the court, in Williams vs. Morgan 111, U. S., p. 699: "It was an order final in its nature, and was made in a matter distinct from the general subject of litigation; a matter by itself, which affected only the parties to the particular controversy, and those whom they represented." See Gumble v. Petkin, 113 U. S., 545.

An appeal from the decree confirming the sale to Shattuck could not bring up for review the question of Mr. Camden's right to purchase under his contract with the creditors. If he had intended further to insist upon his right to purchase under the contract he should have appealed from the decree of Jan. 22nd, 1885, or if he could not have appealed until the case was ended, he should have excepted to the subsequent sale to Shattuck upon the ground of his prior right. Turner v. Farmers Loan and Trust Co., 106 U. S., 552. Not having excepted and becoming personally interested with Shattuck in the purchase and consenting to the confirmation of the sale to him, he abandonded his claim to purchase as trustee for the creditors under his contract with them.

Corning v. Nail Factory, 15 How., 451.
Farmers Loan and Trust Co. v. Waterman, *supra*.

And the only controversy remaining in the suit in which Camden has any interest was whether he was liable for the deficiency of $53,950 for which decree was rendered against him, and his appeal can present for review only that question.

II.

If our motion to dismiss the appeal be not well taken then we respectfully submit that the supersedeas ought to be vacated to all parts of the decree, except that which requires Camden to pay into the registry of the court $53,950.

In the practice in this court a writ of supersedeas is ordinarily not issued to supersede a decree appealed from. The order allowing the appeal and the supersedeas bond given, by force of the Act of Congress, operate as a supersedeas. It is evident, therefore, that in order to determine in any case whether they operate as a supersedeas the order and the bond must be considered and construed together. In this case, perhaps, the order allowing the appeal is broad enough in its terms to supersede the whole decree if the condition of the bond were broad enough for that purpose. But when the recitals of the bonds are looked to it seems that it only is intended as a supersedeas to the decree against Camden, that he is liable for and do pay into the registry of the court $53,950.

The recital of the bond is that, "Whereas, * * * a decree was rendered against the said Johnson N. Camden, on the 15th day of May, 1885, * * * * and the said Johnson N. Camden having obtained an appeal * * * * to reverse the decree in the aforesaid suit." (See Appendix, pp. 15 and 16.) The recital certainly only includes the decree against Camden and is a supersedeas to that only. Now, unless those parts of the decree holding Thompson and Payne liable, confirming the sale and distributing the purchase money can be said to be a decree *against Camden* then this bond cannot operate as a supersedeas to those matters.

If the condition of the bond, considered in connection with the record, be not sufficient to render the appellant and his sureties therein liable for the interest on the purchase money in the registry of the court during the pendency of the appeal, and damages that might result to the purchaser in being kept out of possession of the property, in case the decree should be affirmed, then clearly the bond does not operate as a supersedeas to these parts of the decree.

C. C. COLE,
W. L. COLE,
Attorneys for Appellees.

So much of the record as it will be necessary to read in considering these motions ~~are~~ is printed as an appendix to this brief.

Appendix

[Exhibit, No. 1.]

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

F. L. B. MAYHEW, and others
v.
THE WEST VIRGINIA OIL and OIL LAND COMPANY, and others.
} In Equity.

This cause came on to be again heard at the present term upon the report of sale of J. B. Jackson and W. L Cole, Special Commissioners, made by them on the 17th day of March, 1885, to Charles H. Shattuck; and upon the exceptions to said sale filed by the Toledo National Bank and others; and upon the petitions of said bank and others filed in this cause on the 17th day of April, 1885, and the petition of Heman Loomis filed herein on the 23rd day of April, 1885; and the motion of Johnson N. Camden to strike said petitions from the files, and the demurrers of said Camden to said petitions; and the replications of the said petitioners to said answers; and the testimony taken by the petitioners in support of said petitions; and also upon the petition of James H. Carrington and others filed herein on the 21st day of November, 1884, to vacate the order entered herein on the 3d day of November, 1884 permitting William P. Thompson and Oliver H. Payne to withdraw the deposit of ten thousand (10,000) dollars theretofore paid into court by them, and purporting to cancel the bond given by them and William N. Chancellor to bid one hundred and seventy-three thousand (173,000) dollars for the property mentioned in this cause at any future sale thereof; and upon the decree entered in said cause on the 23d day of November, 1883, and the orders made therein since that date, and was argued by counsel for the several petitioners and for said Camden.

Upon consideration whereof the court is of opinion that by said bond the parties thereto were obligated to bid for the property mentioned in this cause, the sum of one hundred and seventy-three thousand (173,000) dollars at any sale thereof that might be made after the date thereof under any decree in this cause. The court is also of opinion that by virtue of his bid for said property on the 1st day of October, 1884, the said Johnson N. Camden is liable to pay the difference between his said bid, to wit, the sum of one hundred and seventy-three thousand and fifty (173,050) dollars, and the bid of the said Shattuck of one hundred and nineteen thousand and one hundred (119,100) dollars, if the last sale shall be confirmed, and all costs rendered necessary by his failure to comply with the terms of sale. And the court is also of opinion that the said sale to Shattuck should be confirmed unless either the said Camden, or the said Thompson and Payne will take the said property at the amounts of their bids respectively. And thereupon, and after announcing the foregoing opinion in open court, the court offered the said Camden who was present in court with his counsel to permit him to take the said property at the sum so bid for the same by him, and confirm the sale of said property to him if he would consent so to do and pay the cash therefor, which the said Camden in open court refused to do, and declared he would not take the property unless the sale should be confirmed to him on the basis of the contract mentioned in his petition filed on the 6th day of October, 1884. The court then called on the said Camden who acted as the agent of the said Thompson and Payne in making the bid for them, to elect for them whether they would take the said property at their bid of one hundred and seventy-three thousand (173,000) dollars, and pay the cash therefor, and said Camden thereupon declared that while he had authority to make the bid originally he had not authority to make an election for them under the offer now made.

It is therefore this 15th day of May, 1885, ordered, adjudged, and decreed, that the motion of the said Camden to strike said petitions from the files be overruled, and his demurrers to said petitions also overruled. ✗It is further ordered, adjudged, and decreed, 1st that so much of the order of the 3d day of November, 1884, as purports to cancel the said bond of said Thompson, Payne and Chancellor, be, and the same is hereby vacated and for naught held.✗ It is further ordered, adjudged and decreed, 2nd that the report of the said commissioners of the sale made by them to Charles H. Shattuck on the 17th day of March, 1885, be, and the same is approved; and the said sale is hereby ratified and confirmed, and the said commissioners are hereby authorized and directed to convey, by proper deed, the said property to the said Shattuck, and he is to be let into the possession of said property as of the 17th day of March, 1885.✗ 3rd It is further adjudged, ordered and decreed, that the said Johnson N. Camden is liable for and that he do pay into the registry of this court for the benefit of such of the parties to this suit, or other persons, who may be entitled thereto, the sum of fifty-three thousand nine hundred and fifty (53,950) dollars with interest thereon from this date and all costs, to be taxed by the clerk ren dered necessary by his failure to comply with the terms of sale by paying the amount of his bid in cash. And any party to said cause appearing to be entitled to any portion of said sum may sue out execution, as at law, upon this decree, against said Camden, for the amount herein decreed against him, and all money which may be realized from said execution, or executions, shall be paid by the Marshal into the registry of the court to the credit of this cause.

It is further ordered that Charles H. Shattuck the receiver of said property do settle his accounts before the Auditor, up to this date, and that he pay any balance remaining in his hands arising from the rents and profits of said property, up to the 17th day of March, 1885, into the registry of the court to the credit of this cause, and that he pay or deliver to the purchaser of said property any sum of money or other property in his hands from the rents and profits of said property from the said 17th day of March, 1885, to the date hereof, which said settlement shall be reported by the Auditor to the court and his fee therefor taxed in the costs of this suit.

It is further ordered that the costs of this suit still remaining unpaid, and the costs and expenses of sale remaining unpaid, including two (2) per centum commission to said commissioners, on the amount of the last sale, as a compensation to them for all services rendered and to be rendered by them as such, be paid out of the money now in the registry of the court.

It is further ordered that the money remaining in the registry of the court after the payment of the costs and expenses above referred to, together with any further sum that may be paid into the registry under this decree, be applied to the payment of the debts as ordered in the decree passed in this cause on the 17th day of November, 1883, except so much thereof as may be applicable to the sum still remaining due upon the debt therein adjudged to William D. Thompson, now owned by Johnson N. Camden and the sums adjudged to Heman Loomis, and also the further sum of eighteen thousand five hundred dollars to be held for the future determination of the court, whether it or any part thereof is applicable to the alleged judgment of Charles D. Colman who has filed a petition in this cause claiming the same, and the amounts above specified will remain in the registry of the court until the further order of the court. The payments of money authorized by this decree shall be made by check drawn by the clerk of this court on the several banks where the funds are or may be deposited, to the order of the parties entitled or their solicitors of record, and approved by one of the judges of this court, and said clerk shall take and file in the papers of this cause receipts therefor, and for all his trouble and services in so doing he shall be entitled to receive out of said funds so to be checked out by him a sum equal to one (1) per cent thereof—the fee allowed by law.

ORDER ALLOWING APPEAL.

Thereupon Johnson N. Camden in open court prayed an appeal from this decree, which appeal is allowed to act as a supersedeas on his giving the security required by law, in the penal sum of $337,000.

And on the same day the following order was entered of record, to wit:

F. L. B MAYHEW & CO.
v.
THE WEST VIRGINIA OIL and OIL LAND COMPANY, and others. } In Equity.

This day came Johnson N. Camden by J B. Jackson, his solictor and moved the court to lessen the amount of the appeal bond required by the order entered this day granting to him an appeal and supersedeas to the decree entered in in this cause, to the granting of which motion the court takes time to consider thereof.

At a Circuit Court of the United States for the District of West Virginia continued and held at Parkersburg, in said District on the 11th day of June, 1885, the following order was made and entered of record. to wit:

F. L. B. MAYHEW & CO.
v.
THE WEST VIRGINIA OIL and OIL LAND COMPANY. } In Equity.

Upon a motion of Johnson N. Camden entered in this Court on the 6th day of June, 1885, to reduce the penalty of the bond required by the decree entered in said cause allewing and appeal and supersedeas to said decree.

This day came the said Johnson N. Camden by J. B. Jackson his Solicitor as also the several creditors interested in the decree appealed from by W. L. Cole and B. M. Ambler, their solicitors, and the matters arising on said motion having been fully heard and considered by the court.

It is therefore ordered that the motion of the said Camden be allowed. And that the penalty of appeal bond heretofore required be lessened, and that in lieu of the penalty of said bond required by the order allowing said appeal herein before entered, that the same be now fixed at two hundred thousand dollars and that upon the execution and approval of said bond in the sum of two hundred thousand dollars, the appeal heretofore allowed is to stand and be continued in full force and effect.

And it having been suggested to the court that by reason of the several different interests involved in said decree appealed from, it would be proper to make said appeal bond payable to the clerk of this court for the benefit of all of said parties. It is further ordered that said appeal bond so to be executed by the said Johnson N. Camden in perfecting his said appeal be made payable to Lyman B. Dellicker, clerk of the Circuit Court of the United States for the District of West Virginia in trust for whom it may concern. All of which is ordered accordingly.

Copy teste:

L. B. DELLICKER, *Clerk.*
C. C. U. S. D., W. Va.

Know all men by these presents, that we, Johnson N. Camden, William P. Thompson, George W. Thompson and William N. Chancellor are held and firmly bound unto Lyman B. Dellicker, clerk of the Circuit Court of the United States for the District of West Virginia in trust for whom it may concern, in the full and just sum of two hundred thousand dollars to be paid to the said Lyman B. Dellicker, clerk &c., in trust for whom it may concern his certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this thirteenth day of June, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas, lately at a Circuit Court of the United States for the District of West Virginia in a suit depending in said court, between F. L. B. Mayhew & Co., and others and the West Virginia Oil and Oil Land Company and others; a decree was rendered against the said Johnson N. Camden on the 15th day of May 1885, which was entered on the 6th day of June, 1885, and the said Johnson N. Camden having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said F. L. B. Mayhew & Co. and others, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington the second Monday of October next.

Now, the condition of the above obligation is such, that if the said Johnson N. Camden shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

JOHNSON N. CAMDEN, [SEAL.]
W. P. THOMPSON, [SEAL.]
GEO. W. THOMPSON, [SEAL.]
W. N. CHANCELLOR, [SEAL.]

Approved as a supersedeas bond.

J. J. JACKSON,
District Judge, June 15th, 1885

Copy teste:

L. B. DELLICKER, *Clerk.*
C. C. N. S., W. Va,

[*Exhibit No. 4.*]

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

F. L. B. Mayhew & Co,
vs:
The West Virginia Oil & Oil Land Company, *et al.*
} *In Equity.*

To the Honorable Judges of said Circuit Court.

Your petitioner Johnson N. Camden, respectfully represents that he is the holder of the amount decreed in the above cause on the 17th day of November, 1883, in favor of W. D. Thompson.

He further shows that in the month of November, 1883 your petitioner entered into a contract with J. H. Carrington, Heman Loomis and others, in whose favor said decree was passed in the above stated cause on said November 17th, 1883, by which contract it was agreed that your petitioners should purchase the lands and property of West Virginia Oil and Oil Land Company described in said decree and thereby directed to be sold; that such purchase should be made on behalf the creditors named in said decree, and that your petitioner was authorized to use and apply the several claims respectively decreed in their favor in satisfaction of the purchase money, at any sale had under said decree; and it was further provided in said contract that your petitioner after purchasing said property should hold it in trust until the amounts named in the decree were paid off in full out of the rents and profits of the property and that when the parties respectively, should have thus received the amount of their several debts, then the creditors aforesaid released and quit claimed all their right, title, and interest in and to the property to your petitioner.

The said contract is herewith filed and made part hereof marked Exhibit "Camden A."

Your petitioner made that contract in good faith, he entered into it upon the faith of and relying upon the said decree of November, 1883, intended to carry it out according to its terms, and such he believes was the purpose of all the parties named therein ; and that such contract was made long before your petitioner had any notice that any objection was made as to any part of said decree and long before any proceedings were taken questioning the validity of said decree.

Shortly before the day on which said property was offered for sale, on October the 1st inst. Heman Loomis, one of the parties to said contract, notified your petitioner that Loomis demanded and expected that your petitioner would bid upon the property and buy it in, pursuant to the terms and conditions of that contract, and that Loomis would hold your petitioner liable for any violation of said agreement, which notice has been returned with the report of sale made by J. B. Jackson, and W L. Cole commissioners.

The sale was made on October 1st, 1884, and your petitioner as the agent and trustee of the several parties to said contract bid for the property aforesaid the sum of one hundred and seventy-three thousand and fifty dollars. And your petitioner now tenders and offers himself ready to carry out that contract, according to its terms in such manner and form as this Honorable court may require or direct.

Your petitioner is advised and believes that he stands in a fiduciary relation to the parties to said contract, and that he may properly invoke the direction and guidance of the court to protect him in the administration of his trust; and he further informs your Honor that he is largely interested to have the contract performed and executed and that he desires that the same may be done.

Your petitioner says further that he is advised the amount due on the day of sale and unpaid upon the several debts adjudged by said decree amounted with interest
to the sum of - - - $199786.91
and the bid was - - - - 173050.
leaving a deficiency of - - $2673,691
between the amount of the bid and the amount necessary to pay the liens.

The oil in the receivers hands and other property held by him applicable to said debts is estimated upon the last obtainable information at about $11,000 in value and that $11,000 is offset in part by the costs of sale, commission, expenses and costs of suit, and other charges against the funds in the hands of the court, and thus it is as your petitioner shows, that even if your petitioner were willing to pay the entire amount of said bid of $173,050-00 in cash the amount decreed in favor of the holders of the last liens under said decree would not be covered by many thousands of dollars; while under said contract the entire amount of the adjudged indebtedness will eventually be paid in full; and such was the reason for making the contract as shown by its terms

Your petitioner further says that he is advised that of the several debts named in said decree there was due upon the amount decreed in favor of Wm. D. Thompson, on October, 1st 1884 after applying all moneys paid by the receiver about - - - $30,100,

1	To Heman Loomis,	with int. from	Nov.	17 83.	$39,476.61
2	“ James H. Carrington,	“	“	“	46,934.58
3	“ A. C. Worth,	“	“	“	2650.08
4	“ W. H Beach.	“	“	“	2888.58
5	“ The Toledo Nat'l. Bank,		“	“	9843.70
6	“ R. S. Blair,		“	“	593.16
	“ R. S. Blair,		“	“	593.66
7	“ Benjamin B. Valentine,		“	“	9056.93
8	“ Heman Loomis,		“	“	49,111.10

Your petitioner further represents that it was positively and distinctly agreed and understood among all the parties whose mames are mentioned in the caption of said contract of November, 1883, to wit, J. N. Camden, J. H. Carrington, W. H. Beach, A. C. Worth, Toledo National Bank, R. S. Blair, B. B. Valentine and Heman Loomis, that your petitioner should purchase said property under said decree, and your petitioner charges it to be a fact that each of said parties did in person or by their representatives assent to that contract, and its terms, the original whereof, is herewith exhibited, he is advised is in the hand-writing of W. L. Cole, attorney and solicitor of record for said parties named in said decree except W. D. Thompson, and Heman Loomis, and it was represented and stated by J. H. Carrington, and by said Cole, that Carrington was authorized to act for said bank, and that Mr. Cole could, speak for W. H. Beach, and that the said contract might be considered complete as to all the parties. Your petitioner now discovers that the paper was not actualy signed by W, H. Beach, or by said bank. He believes and charges that both are bound by said agreement though they did not sign the same, but to avoid any vexatious litigation your petitioner is willing to pay if required by the court the full amount of the claims of said Beach, and of said bank in cash.

Your petitioner prays that the premises being considered, he may be allowed to apply the claims and debts adjudged by said decree in discharge of his liability for the purchase money, that his compliance with the terms of aid contract may be considered and decreed a compliance with the terms of said sale ; that the said contract may be received in discharge of his bid, that the sale be confirmed and that a deed be made to your petitioner for the said property, and that the court will make such order and decree, and grant such other general and further relief in the premises as your Honor may deem right as in Equity may be proper, and as in duty bound &c. he will ever pray &c.

CALEB BOGGESS, J. N. CAMDEN,
CLARKSBURG, W. VA. SOL.

STATE OF WEST VIRGINIA,
COUNTY OF WOOD. } *to wit.*

This day personally appeared before the undersigned authority of said county, J. N. Camden, who being duly sworn upon his oath says: that he has read the foregoing petition, and signed his name thereto as petitioner. And that the matters in said petition as far as stated upon knowledge are true; and so far as stated upon information he believes them to be true.

J. N. CAMDEN.

Sworn and subscribed to before this 6th, day of October 1884. Witness my hand and official seal.

[SEAL] LUCCIUS A. COLE,
Notary Public.

Copy teste
L. B. DELLICKER,
Circuit Court U. S. D. W. Va.

Circuit Court U. S. Dist. W. Va., filed in open court this 6th day of October, 1884.

L. B. DELLICKER,
Clerk.

'Exhibit A, With Petition of J. N. Camden.'

This agreement made this day of November, 1883, between J. N. Camden, J. H. Carrington, W. H. Beach, A. C. Worth, Toledo National Bank, R. S. Blair, B. B. Valentine and Heman Loomis,

Whereas, on the 17th day of November, 1883, a decree was made by the Circuit Court of the United States for the District of West Virginia, in a suit in equity, therein pending, wherein F. L. B. Mayhew & Co. are plaintiffs, and the West Virginia Oil and Oil Land Company and others are defendants, whereby it was ascertained and adjudged that certain large sums decreed in favor of the parties hereto, respectively, are liens on the property of the defendant company, and that said property be sold for the satisfaction hereof. Said decree is hereby referred to and made part hereof,—the said J. N. Camden being the assignee of W. D. Thompson, mentioned in said decree and entitled to receive the sum decreed to said Thompson.

And, whereas, the parties hereto desire to protect their several interests and to insure the sum realized at sale of said property under said decree, shall be sufficient to pay the several debts thereby ascertained and established. Now, therefore, the parties hereto have covenanted, and they do hereby covenant and agree to and with each other as follows:

First. That when said property is offered for sale under said decree that the said J. N. Camden shall purchase the same for the mutual benefit of the parties hereto, if it sell for a sum not exceeding the aggregate amount of said claims adjudicated against it including interest and cost and the expenses of sale.

Second. That if said Camden shall become the purchaser of said property, at any sale made under said decree, whether for the full aggregate of said claims, costs and expenses aforesaid, or any less sum; then the several parties hereto do severally assign and transfer to the said Camden, in trust, the several amounts decreed in their favor respectively by said decree and the said Camden as the agent and trustee of all the parties hereto, is authorized to apply the said several debts and amounts in payment of the purchase money required at such sale, and in any settlement made between the said Camden and the commissioners authorized to make said sale, the said Camden is hereby authorized as such agent and trustee to execute and deliver to said commissioners all proper receipts and papers that may be necessary for all and any lien, debt, or claim, that may be held by the parties hereto respectively, as fully and effectively as though the parties hereto were present and did such act in person.

Third. And the said J. N. Camden covenants and agrees with the parties hereto, and each of them that, if he shall become the purchaser of the said property, as aforesaid, he will at once execute and place on record in the county of Ritchie a declaration of trust, declaring that he holds the said property for the use and benefit of the parties hereto for the payment of the debts adjudicated in their favor respectively by said decree, to be paid in the order hereinafter particularly set forth. And the said Camden further covenants and agrees that, if he shall purchase said property, as aforesaid, he will hold the same in trust for said parties, and each of them and will control and manage the same to the best interest and advantage of said parties, and that he will collect and apply the rents, issues and profits of said property to the payment of said debts, monthly, charging nothing for his time, trouble, or services, as such trustee, but only the actual necessary expenses of executing said trust.

Fourth. And each of the other parties hereto do hereby covenant and agree with the said Camden, in consideration of his covenant herein contained, that as soon as the debts due them respectively, are paid by him as such trustee, they will release and quit claim to him all their right, title and interests in, and to, said property. And, further that the payment of each and all of the debts named, as herein provided, shall operate as a full release and discharge from the parties hereto, and the title to the said property shall, by the operation of said payment, stand vested in said J. N. Camden in fee simple.

Fifth. It is further covenanted and agreed by, and between the parties hereto, that the rents, issues and profits of said property, after deducting necessary expenses, as aforesaid, shall be paid out, and applied by said trustee, as follows:

1. The balance, if any, due to J. N. Camden, assignee of W. D. Thompson, shall be fully paid.

2. Then forty per cent. of the proceeds of said property shall be paid to Heman Loomis, and sixty per cent. thereof to the said Carrington, Worth, Beach, Toledo National Bank, Blair and Valentine, according to their rights and priorities as fixed by the said decree as between the six parties last named, until they, and each of them, are fully paid.

3. Then, sixty per cent. of said proceeds shall be paid to said Carrington, so far as to reimburse and indemnify him such sums of money, if any, as he may be held liable

for as maker, acceptor, or endorser, of two certain bills of exchange, for the payment of which the said West Virginia Oil and Oil Land Company is priorly liable, one of which bills is supposed to be held by Maretta Arnold of Michigan, and is for the sum of $1,500, and the other is held by the National Bank of Commerce, in New York. and is for the sum of $2,431.31.

4. After the payment of the foregoing amounts the said property shall be held in trust for the payment of any balance due said Heman Loomis until the same is fully paid.

Witness the following signatures and seals:

Signed. J. N. CAMDEN, [SEAL.]
HEMAN LOOMIS, [SEAL.]
By B. M. AMBLER,
Attorney in Fact.

Signed. J. H. CARRINGTON, [SEAL.]
A. C. WORTH, [SEAL.]
B. B. VALENTINE. [SEAL.]

Exhibit No. 5.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

F. L. B. MAYHEW & CO.,
vs.
THE WEST VIRGINIA OIL AND OIL LAND COMPANY AND OTHERS.
} In Chancery.

This cause came on to be heard at the present term upon the report of J. B. Jackson and W. L. Cole, commissioners heretofore appointed to make sale of the property mentioned in this cause, filed on the 4th day of October, 1884, whereby it appears that J.N. Camden bid the sum of one hundred and seventy-three thousand and fifty dollars for said property when it was offered for sale by said commissioners, at public auction, on the 1st day of October, 1884, pursuant to the former decree of this court passed in this cause, and that said commissioners accepted the bid of said Camden, but that he has not complied with the terms of said sale by paying to said commissioners the amount of said bid or any part thereof. Upon consideration of said report, and the exceptions filed thereto, by several parties to this suit,and the rule heretofore awarded against said Camden to show cause why said property should not be re-sold at his cost and risk, and the petition of said Camden treated and considered as his answer to said rule, and the answers to said petition filed by the exceptors to said report and the argument of counsel for said Camden and said exceptors; and the said Camden still failnig to comply with the terms of said sale by paying the amount of his said bid in cash; it is this 22nd day of January, 1885, considered and ordered by the court that, said petition and answer of said Camden is not a defense to said rule. It is further ordered that the exceptions to said report be, and the same are hereby sustained, and the said sale is set aside; and the said commissioners will proceed at once to advertise and re-sell said property in accordance with the terms and provisions of said former decree passed in this cause on the 17th day of November, 1883, for cash. And if the said property shall be sold for a less sum than one hundred and seventy-three thousand and fifty dollars, the said bid of the said Camden, the court reserves for further determination in this cause the question whether the said Camden will be required to pay the deficiency.

(Signed,) HUGH L. BOND,
Circuit Judge.

(*Exhibit 6.*)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

F. L B. Mayhew & Co.
vs.
The West Virginia
Oil & Oil Land Co.
} *In Equity.*

To the Honorable, the Judges of said Court in Chancery sitting.

The answer of Johnson N. Camden to the petition of the Toledo National Bank; Benjamin B. Valentine and Robert S. Blair. filed in the above entitled cause.

The respondent Johnson N. Camden, now and at all times hereafter reserving all manners of benefit and advantage to himself of exceptions to the many errors and insufficiencies, in said petition contained, for answer thereto. or unto so much or such parts thereof as respondent is advised is material for him to make answer unto: answering says:

This respondent is informed that the petitioners are creditors of the defendant company, and that by the decree made and entered in said cause on the 17th day of November 1883, by this Honorable Court, the real estate and property of the defendant company, as mentioned and described in the bill and proceedings of this cause was decreed to be sold; to pay the several creditors of said defendant company, as recited in said decree, of whom the petitioners were a part.

Respondent admits that it appears by the record of the proceedings in said court, that the Special Commissioners, appointed by said decree of November 17th 1883 to make sale of said property, proceeded to make sale thereof, pursuant to the terms of said decree on the 17, day of March 1885, on which day Charles H. Shattuck, being the highest bidder, became the purchaser thereof, at the sum of $119,100, which sum was by the said Shattuck paid into the registry of the court to the credit of said cause.

Respondent is not advised should said sale be confirmed, whether or not the proceeds of said sale would be sufficient to pay to the petitioners the sum so decreed to be paid them, and without admitting, or denying this allegation of the petition, calls for proof of the same.

Respondent denies that this is the third time, the said property has been *sold* by the said commissioners, under and by virtue of said decree, but admits that said property has been offered for sale by said commissioners under and by virtue of said decree upon three different occasions; the first two of which said commissioners having reported to the court, the court refused to confirm, but directed a re-sale, and so respondent submits there was no sale of said property at either of the times, first and second mentioned in said petition. As to the third time mentioned, the court having not as yet acted upon the report of sale of said commissioners, respondent is not advised whether the bid of the purchaser will be accepted, and the sale confirmed or not. Respondent admits that said commissioners in pursuance of said decree on the 1st day of May 1884, offered said property for sale, and that on said day Charles H. Shattuck, acting for himself, and as respondent is informed and believes for Robert Garrett of Baltimore and others, became the purchaser thereof for the sum of $163,000, and as respondent is further informed and believes, paid said sum to said commissioners. Respondent is further informed and believes. and therefore admits that upon the application of the said Shattuck, for a confirmation of the report of said sale, William P. Thompson and Oliver H. Payne, citizens of and residents of Cleveland in the State of Ohio, proposed and offered in open court to bid and pay $173,000, for said property if the court would direct a re-sale thereof. And the court did thereupon refuse to confirm the sale so made to said Shattuck, and did order re-sale of said property upon condition that said Thompson and Payne should within ten days give bonds with good security in the penalty of $250,000 payable to the clerk of this court; conditioned that at any future sale of said property. they would bid the sum of $173.000, for said property, and comply with the terms of sale if they should become the purchasers at that price; and upon the further condition, that they should within ten days deposit in the registry of the court $10,000, in cash as additional security for their compliance with the offer so made by them.

Respondent is informed, and believes, and therefore admits that the conditions so imposed by the court upon the said Thompson and Payne having been complied with by them, the said property was again offered for sale by said commissioners on the 1st day of October, 1884. On which day respondent at the request of said Thompson and Payne and for their account, authorized the bid of

$173,000 for said property and said bid being made and cried,for and on behalf of said Thompson and Payne and at their request (neither of them being present at said sale(respondent for the creditors mentioned in said decree of November 17th, 1883, and in pursuance of the contract made with said creditors, which said contract is filed with the report of sale of said commissioners filed in the papers of said cause, and is prayed to be read in connection with and as part of this answer, bid the further sum of fifty dollars, to wit: the sum of $173,050 00, and the property was knocked down to respondent, his bid being the highest bid offered for said property.

Respondent denies that he failed or refused to comply with the terms of said sale as charged in said petition, on the contrary thereof having bid for said property on behalf of himself and others of the creditors in said decree mentioned, who were parties to the contract above mentioned, and which respondent is advised constituted an assignment on the part of each of the creditors as signed the same to him of their respective interests in said decree.

Respondent exhibited said contract to said commissioners and tendered the same to them in discharge of the amount bid by him for the purchase oı said property, with the request that said contract be reported by said commissioners to the court for its action in the premises.

Respondent admits that a rule was awarded against him by this Honorable Court to show cause why he should not be compelled to comply with the terms of sale, and why a re-sale of said property should not be ordered at respondent's risk and costs.

Respondent filed his petition setting up said contract entered into with said creditors as hereinbefore mentioned (which petition of respondent was treated as respondent's answer to said rule), in which petition respondent prayed that he be allowed to apply the claims and debts adjudged by said decree in discharge of his liability for the purchase money; that his compliance with the terms of said contract may be considered and decreed as a compliance with the terms of said sale. That the said contract may be received in discharge of his bid, that the sale be confirmed and that a deed be made to respondent for the said property. Upon the hearing of which rule and said answer, the court ordered a re-sale of said property reserving the question of the liability of respondent for any deficiency should the property sell for less than the bid of respondent, the court deciding that the answer of respondent is not a defence of said rule.

Respondent is advised by counsel that the court having refused to confirm said sale at the bid so made by respondent,and in entering the decree ordering a re sale of said property that all liability upon the part of respondent for such deficiency was determined, and respondent discharged therefrom.

That respondent was not liable as purchaser at sale until the court had accepted the bid of respondent and confirmed the sale absolutely.

Respondent further answering says: that the said property at the said last mentioned sale did not sell at a great sacrifice, on the contrary thereof by reason of the stringency in the money market, and the decrease in the value of property of the same kind as the property sold and the manifest decrease in the production of said property as shown by the reports of the receiver that said property was not as valuable by many thousands of dollars as when respondent first bid on same, and respondent would not at said last mentioned sale had he been present, have bid anything like the former sum bid by him except as trustee for the creditors under said contract.

Respondent denies that the deficiency in price at said last sale was accomplished by collusion and combination of Respondent, Oliver H. Payne, William P. Thompson and William N. Chancellor, together with other unknown persons as charged.

Respondent admits that the property being large and valuable, and the probable amount for which said property would sell being large; that the sale, being for cash would be more than any one individual would be willing to raise and invest in that character of property. And that certain persons, some of whom are named in the petition, did agree to join in the purchase of said property, and if the property was so purchased by them, that they would form a corporation to own and work said property.

Respondent denies that there was any combination or intention on his part to beat down the price of said property or to procure the same for less than its fair cash value, on the contrary thereof said arrangement was entered into *bona fide* to compete for the purchase of said property and to bid for the same to the fair value thereof, and respondent states as his opinion and belief that without such an arrangement the property would not have brought as much as it did at that sale.

Respondent avers that none of the parties were interested in any of the liens upon said property, except the Thompson debt represented by himself, that many of the other lien creditors were present at the said sale, as he is informed, and that others were present by counsel, that the sale was fair and open and ample opportunity afforded to all interested to bid for the same, and to the best of his information from the present condition and character of the property, the same was sold for all it would bring, and more than it would now probably bring upon another re-sale.

Respondent denies that he and the said Thompson and Payne are acting together in all matters pertaining to the sale of said property. On the contrary thereof, respondent avers, that at the time the said Payne and Thompson prayed the court to open the bidding upon said property respondent had left this country forEurope, and respondent was not a party to said proposition,and did not know until sometime afterwards that such a proposition had been made and that the court had accepted and acted upon the same. And respondent further answering denies that at the sale of October 1st, 1884, when he offered the bid for Thompson and Payne, he was personally interested in said bid. On the contrary, as hereinbefore stated, respondent authorized the bid of $173,000 for them at their request, and afterwards bid over said sum representing himself and other creditors; and in said last mentioned bid said Thompson and Payne were not *personally* interested.

Respondent further answering, denies that at the time of said bidding he was an officer of the Standard Oil Company, nor is he now an officer of said company. Respondent admits that he is the president of the Camden Consolidated Oil Company. Respondent avers that said company is a separate and independent organization from the Standard Oil Company, and whilst engaged in the same business having business relations with the Standard Oil Company, its business is governed and controlled by its own board of directors.

Respondent admits that he was present at the time the property of the defendant company was offered for sale and that he did not bid therefor as charged in said petition, but denies that he did not bid for the reasons therein alleged. Respondent by way of explanation of his reason for not bidding at said sale avers and charges that the decree of the 17th day of November, 1883, was a consent decree agreed to before the same was entered by the court by all of the creditors therein mentioned either in person or by their respective attorneys. That said creditors before the entering of said decree were convinced that said property under expensive litigation and in the management of a receiver of the court would not for a long time if ever discharge their respective debts. That if an arrangement could be made whereby the parties could agree to the sale of the property, and to have it purchased by a competent agent, who should manage the same for the common interest of the creditors, by the development of new wells on the territory; and the careful and economical management of the property it might pay all the liens in the manner agreed upon in a reasonable time. In order to accomplish this end, the lien creditors consulted together for several days in arranging their respective priorities and agreeing on the form of the decree as named in the said decree. But your respondent avers that under the contract entered into on the same date, but prior to the entering of said decree mutual concessions and compromises were made in reference to priorities which materially changed the priorities of payments as made in said decree, as will be shown by reference to the decree and to the contract between the said respondent and the creditors filed with the answer of the respondent to the petition in this case,both dated the 17th day of November, 1883.

Your respondent avers and charges that in agreeing to said consent decree and to the contract of the same date herein referred to, that said contract was based upon valuable considerations to most if not all of the creditors named therein.

Your respondent avers that amongst other things, Storrs, whose debt was paid off under and by virtue of said agreement in addition to the payment of his debt required Heman Loomis to assign him $5,340.00 of his first money decreed to him for the purpose of reimbursing him for certain stocks of the West Virginia Oil and Oil Land Company held by him, and also that certain suit or suits in Michigan, in which the said Storrs or the said Carrington or one or both of them were interested as parties were to be dismissed, which suit or suits respondent is advised were dismissed after the decree was agreed upon and before it was entered,said suits as respondent was informed involved over $20,000. The said Storrs was further allowed to receive the money due him under said decree. His debt standing upon the same footing with the debts of Thompson and the first part of the Loomis debt to be paid out of the money then in the hands of the receiver, and which was paid to said Storrs from said money, which was assented to by your respondent representing the Thompson debt, and by the said Loomis, Carrington declining to enter into said agreement unless Storrs was first satisfied. It was further agreed by the terms of said contract that the said Loomis instead of receiving $39,476.61 adjudged by said decree to be prior to the debt of J. H. Carrington, that the Carrington debt should be paid *pro rata* with the Loomis debt; the said Carrington to received 60 per cent while the said Loomis received but 40 per cent and that the said 60 per cent. should continue to be paid to Worth, Toledo National Bank, Blair and Valentine, until their debts were paid, thus giving to the creditors an advantage over Loomis. The said Camden at the same time making concessions and advancementts in money on his part to the said Loomis in consideration of the residuary interests the said Camden and Loomis would have in the said property after the payment of the debts of all the other creditors, so that said contract was based upon a valuable money consideration, which passed at the time and was made in good faith in order to secure the consent of all the parties to enter said decree; which contract the respondent desired to carry out in good faith, and the property would have been bid for by him under said contract at the time it was first offered for sale but for the fact that after entering the said decree and before the said sale, respondent was advised and informed that the debt of Loomis was attacked in this Honorable Court, and that such prooceedings were had that by direction of the court as to the debt of said Loomis the amount thereof should be paid into the registry of the said court to await the determination of the proceedings in relation thereto, thus requiring a large sum of ready money to be paid for that purpose, and the said creditors not indicating any willingness to aid your respondent in raising said money and the respondent at the time said contract was entered into, not contracting or expecting to be called upon to advance any money upon his bid to purchase under said contract, the said contract not requiring him to do so. Respondent was advised that it was not safe for him to bid unless he was prepared to pay at least the amount of the Loomis debts into court; under this advice respondent declined or refrained from bidding at the first sale of the property on the ground that he might incur personal liability in biding under the contract if the amount of the Loomis debt was required to be paid into court to await indefinite litigation. Respondent avers that by the subsequent proceedings under said first sale, said sale was set aside *and the proceedings attacking the debt of said Loomis were dismissed*, or so modified by the opinion or action of the court in entering decree, ordering re-sale under said former decree, that respondent was advised and believed that the obstacles to his bidding under said contract were substantially removed, and upon written notice from Heman Loomis to respondent requiring him to carry out said contract in good faith or to be held personally liable for his failure to do so, respondent in good faith bid for said property under said contract and tendered the same as hereinbefore mentioned to the court in discharge of his bid. Supposing as he had good right to suppose that said contract would be received in discharge of his bid as the same had been entered into in pursuance of the understanding when said consent decree was entered and that said property would not be forced upon said respondent at a price in cash largely in excess of any sum he would bid therefor on a cash basis, and therefor respondent denies that he at any time confederated with others as charged to defeat the confirmation of sale of said property upon the first report of sale or at any other time, but on the contrary thereof was desirous of legally carrying into effect his contract made with said creditors as herein stated. And respondent is still willing to carry out the contract in good faith with the creditors upon his bid under said contract upon a confirmation thereof by the court.

Respondent further answering denies that it became known to him after said first sale that Robert Garrett, chief executive officer of the Baltimore & Ohio railroad had a controlling interest in said purchase, he, with said Payne and Thompson determined and undertook to defeat the confirmation of said sale for the reason among other things that the said railroad company was then paying, and had for many years been paying to said Camden Consolidated Oil Company many thousand dollars annually for the lubricating and other oils used by it in operating its road. Upon the contrary, thereof, respondent again avers that when said Thompson and Payne filed their petition to open the said bidding he had sailed for Europe as hereinbefore stated, and that he was not a party to said proceedings, and had no knowledge that any attempt would be made to set aside said sale, except for the legal reason that the receiver could not become the purchaser, as hereinbefore stated. And respondent says that it is not true that the Camden Consolidated Oil Company was at that time or had been for a long time furnishing said B. & O. Company lubricating oils or receiving therefor large sums of money; on the contrary thereof, the Camden Consolidated Oil Company had not furnished any oils to the B. & O. railroad for about five years prior to said sale.

Respondent admits that he retained Charles Marshal, of Baltimore to appear in this Honorable Court to resis- the confirmation of said first sale, and avers that he did so in the interest of himself and said Loomis, and by consultation and agreement with said Loomis and his counsel. Said Loomis and respondent having mutually large interest in the contract of the 17th of November, 1883, because upon the consent decree which could only be protected by a sale and purchase under the contract, and it was therefore the mutual interest of the said Loomis and your respondent that said sale should be set aside in order that said respondent might be able to bid at a future sale under said contract. Your respondent and the said Loomis being so advised, were of the opinion that C. H. Shattuck who was acting as receiver of the court could not legally become the purchaser of the same property under the decree of the court, respondent's view was to have the sale set aside for that reason and upon that ground alone.

Respondent denies that he obtained the services of Marshal with any understanding between Payne and Thompson and himself, and your *respondent is informed and believes that the services and action of said Marshal in said cause was directed only to set aside said sale for the legal cause stated*, that the only purpose for which said Marshal was retained by respondent, and respondent was surprised when he learned some time afterwards in Europe, the turn the case had taken. Respondent denies that said Thompson and Payne at the request, and by the procurement of respondent and in the interest of said Camden Consolidated Oil Company offered the upset bid of $173,000 for said property and gave their bond therefor as charged, on the contrary, respondent insists that said upset bid was made by the said Thompson and Payne without conference with respondent as hereinbefore stated, Respondent admits that the deposit of $10,000 was paid into the registry of the court as re spondent is informed by the check of the Camden Consolidated Oil Company, but he is informed that said payment was so made by said company through its treasurer for said Thompson and Payne and at their request. Respondent admits from information and belief that said company advanced to said Loomis the money as charged, but denies that it was money paid by said company on its own account, on the contrary, respondent is informed that the said Loomis assigned to said company a portion of his judgment as security to said company for said loan which assignment the said company now holds.

Respondent admits that he bid for said property at the sale of October 1st, 1884, as hereinbefore mentioned, but denies that he refused to comply with said terms of sale, as he was ready and willing to do under his said contract, and refers herein to his petition filed in said cause, as his answer to said rule issued against him as his evidence of willingness to comply on his part, and refers to the exceptions filed by said petitioners. which he prays to be read as part of this answer, to the confirmation of the sale, as to their objections to his compliance and inasmuch as the petitioners, by their action, prevented respondent from complying, respondent submits that he should not now be questioned by the said petitioners for his failure to do so, as they, by their action, -relieved him of all responsibility in the premises. Respondent denies that he employed counsel for Payne and Thompson to obtain a cancelation of their bond, as charged, and the return of said deposit of $10,000. Respondent was not in attendance on said court, nor was he in Parkersburg when said motion was so made; and was in no way responsible for their action.

Respondent admits the rule against him, as charged, and the decree of the 22nd of January, 1885, ordering a re-sale of said property. Respondent, however, submits that, by said decree of re-sale, he was discharged from further liability upon his bid of $173,050, there being no acceptance of said bid, by the court, and a confirmation of said sale, which respondent was advised, were necessary to charge him under said bid.

Respondent denies that said property, in his judgment, was worth $173,050 on a cash basis, at the sale named. On the contrary, thereof, had Respondent believed that he could not bid on the basis of the contract and pay the creditors out of the production of the property, as therein agreed, he would not have been a bidder on said property for anything like said sum.

Respondent believes and charges that said property has, since said sale of October, 1884, largely decreased in value, and was not at the sale of March 17, 1885, worth near as much as at the sale in October previous, and is not at the time of filing this answer, worth anything like said sum. Respondent denies that he procured the return of said deposit of $10,000, and the order purporting to cancel said bond upon the representation made on his behalf by his counsel at his instance and by his direction, that he had made a *bona fide* bid for said property higher than said Payne and Thompson had undertaken to make, and that he had complied, or would comply, with the terms of sale; on the contrary, thereof, respondent avers that he had no counsel to appear for him; that if any such representations were made by counsel they were not made by his procurement, consent, or in any manner directly or indirectly by him, and he is not bound thereby. Respondent, however, submits, that his bid, being made in good faith, and avering that he was, at the time, and ever since, responsible for the amount of his said bid; that he is advised that the acceptance of his said bid, by the commissioners, was a discharge of said bond, and entitled the said Payne and Thompson to a return of their deposit.

Respondent, further answering, says that he is advised that by reason of the refusal of the court to confirm said sale to him, and decreeing a re-sale of said property, that he is not liable to take the said property and pay cash for the same at his bid of October, 1884; and that this Honorable Court ought not to so decree; that said property has been again offered for sale and purchased by Charles H. Shattuck, the purchaser at the first sale, and that the rights of third parties have intervened entitling them to the property, unless, said sale should be set aside for some one of the reasons entitling a Court of Equity to interfere—which reasons respondent respectfully submits does not exist.

Respondent having fully answered, respectfully submits, that the court will not re-hear the rule against him, inasmuch as respondent is advised, that said rule was improvidently awarded against him before the sale at his bid was confirmed. That this Honorable Court, having a discretion to accept said bid and confirm sale, or to reject said bid and order a re-sale of the property, and having by its decree ordered a re sale, this respondent was discharged from his offer to purchase said property, and is not further liable in this Honorable Court by reason of said offer to purchase said property.

Respondent, therefore, submits, whether this Honorable Court can make further order in the premises as prayed for in the petition; and, therefore, prays that the prayer of the petitioners be refused, that their said petition be dismissed, and that he go hence with his reasonable costs by him about his defense herein expended. And as in duty bound he will ever pray, etc.

J. N. CAMDEN,
By counsel.

J. B. JACKSON, Sol.

STATE OF WEST VIRGINIA, }
WOOD COUNTY. } *ss.*

Johnson N. Camden, being duly sworn says, upon oath that he is the respondent, whose name is signed to the foregoing answer, that he has read the same and knows the contents thereof, and that the matters therein set forth, so far as stated on his own knowledge, are true, and so far as stated from information derived from others, he believes them to be true.

J. N. CAMDEN.

Sworn, and subscribed to before me, this 30th day of

LUCIUS COLE,
Notary Publin.

April, 1885.

Copy teste:
L. B. DELLICKER, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR DISTRICT OF WEST VIRGINIA.

F. L. B. MAYHEW & CO,
vs.
THE WEST VIRGINIA OIL & OIL LAND CO, & OTHERS } *In Equity.*

To the Honorable the Judges of said court.

The answer of Johnson N. Camden, to the petition of Heman Loomis, filed in the above entitled cause.

Respondent now, and at all times hereafter reserving all manner of benefit and advantage to himself of exception to the many errors and insufficiencies in said petition contained, for answer thereto or unto so much and such parts thereof as respondent in advised is material for him to make answer unto, Answering says:

Respondent admits that the allegations of said petition numbered 1, 2 3 and 4, so far as they state what appears in the record of said cause to be true.

As to the allegations numbered 6, 7 and 8, in said petition contained, respondent adopts his answer to the Toledo National Bank and others filed in this cause so far as the same is responsive to said allegation as his answer thereto, and denies that his relation to said transaction in the petition of said Loomis charged, were other and different than in said answer to the petition of said Toledo National Bank and others.

As to the charge No. 9 in said petition alleged, respondent denies that he procured an order to be entered in said cause on the 3rd day of November, releasing Thompson and Payne from all liability on their upset bid and for the return of the deposit of $10,000. respondent avers that he was not in attendance upon the court when said order was made and refers to his answer hereinbefore mentioned which he makes a part of this answer as to his connection with said transaction.

Respondent further answering says, that he is not responsible for the misunderstanding or beliefs of the petitioners, Respondent avers and charges that in making his said bid referred he never intended to become personally liable to pay in cash the full amount of his said bid as before in his answer referred to. Respondent insists that his, bid was made in pursance of his said contract with the other creditors in said decree of November 17th, 1883, mentioned, and so informed the said commssioners when they called upon him after said sale and requested his compliance with his said bid, and whilst respondent did state in answer to a question as to what he would do if the court confirmed said sale and refused to give him the benefit of his contract, but should require the cash to be paid, that he would have to pay. Yet, respondent never expected that such an orderwould be made, but relying on his contract, expressly stated to the commissioners that his answer to said question was not to be reported, as his assent, in the event his said contract was not received to pay the amount of his bid in cash. Respondent, whilst admitting that he was a solvent bidder for the amount of his bid, denies that Thompson and Payne was released by him or through his agency, as charged, other than by the legal effect of his bid. Respondent admits the entry of the decretal order of January 22, 1885, and the effect thereof, as stated in charge 11 of the petition. Respondent denies that any such arrangements were entered into as is set out in charge 11 of said petition,but refers to his answer, hereinbefore refered to, and relies upon the same as his answer to this charge, so far as said answer is responsive thereto.

Respondent in answer to charge 12, of said petition, denies that when he made said bid of $173,050, on Oct 1, 1884, he intended and believed he was making himself personally responsible therefor; and that he so stated in effect to the commissioners of sale when they demanded a compliance with the terms of sale. On the contrary thereof, as respondent has repeatedly stated; he now insists that had he believed that the effect of his bid was to render him personally liable to pay the amount thereof in cash, he would not have offered said bid, but that said bid was offered in persuance of said contract, with the expectation that the creditors would be required to comply with the same, as he intended to do; and that his personal liability only extended to the covenants and agreements therein contained; and that his statements to said commissioners were to this effect,in his answer to charge 10 herein.

Respondent admits that he is a member of the U. S. Senate, and respectfully submits that his interests are not to be predjudiced by reason thereof, as respondent cannot understand why such an allegation is made in the petition except for some such purpose.

Respondent again denies that he procured the entering of the decree of November 3, 1884 and also denies that he is estopped to deny his personal liability.

Respondent having fully answered the said petition, respectfully insists that he is not further liable on said property by reason of the fact that his bid was not accepted, by confirmation of said sale; and that he was discharged when the re-sale was ordered by the decree of Jan. 22, 1885. Respondent therefore insists that no decree can be entered against him as prayed for in said petition, nor is the petitioner entitled, as respondent is advised to the relief as prayed for by him, as against the respondent.

Respondent therefore prays that the said petition be dismissed, and that respondent be decreed his costs by him about his defence here expended.

J. B. JACKSON, Sol. J. N. CAMDEN,

By Counsel.

Office Supreme Court U. S.
FILED.
[illegible]
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 80.

JOHNSON N. CAMDEN, Appellant,

vs.

F. L. B. MAYHEW AND COMPANY, et al.

Appeal from the Circuit Court of the United States for the District of West Virginia.

BRIEF FOR APPELLANT.

J. B. JACKSON,
A. H. GARLAND,
Attorneys for Appellant.

Thomas McGill & Co., Printers, Washington, D. C.

IN THE

Supreme Court of the United States.

October Term 1888.

JOHNSON N. CAMDEN, Appellant,
vs.
F. L. B. MAYHEW & COMPANY *et al.*
No. 80.

Appeal from the Circuit Court of the United States for the District of West Virginia.

STATEMENT.

On the 17th day of November, 1883, a decree was entered in this cause in the Circuit Court of the United States for the District of West Virginia, appointing Special Commissioners for the purpose, and directing them to make a sale of the property in the cause for cash. That decree fixed the number and amount and priority of the liens on the property.

The property was first advertised for sale on the 1st day of March, 1884, and at the instance of some of the stockholders of the company was twice adjourned, they paying the expenses thereof, and was first offered for sale by the Commissioners on the 1st day of May, 1884, at which time C. H. Shattuck being the highest bidder therefor, it was knocked off to him at the sum of $163,000, and the cash, or its equivalent, was paid by him to the Commissioners.

Heman Loomis, one of the lienors, filed exceptions to the sale, one of which exceptions was for inadequacy of price; all of the exceptions save this one were overruled by the court, and upon its intimation that this would be also overruled unless it was supported by an offer of a larger bid, William P. Thompson and Oliver H. Payne offered a larger bid of $173,000. The court thereupon required that they should pay into court the sum of $10,000, and give bond with good security, in the penalty of $250,000, to bid that sum and pay cash therefor at any future sale of the property made under a decree in said cause. Upon the payment of the money into court, and giving the bond, the following order was entered:

ORDER (June 30th 1884).

"This cause came on to be heard on the 18th and 19th days of the present month, upon the motion to confirm the sale made by J. B. Jackson and W. L. Cole, Special Commissioners, under the decree passed and entered in this cause on the 17th day of November, 1883, and upon a petition filed herein by Heman Loomis to set aside the sale of the property of the defendant company made on the 1st day of May, 1884, and upon exceptions taken by the said Loomis to the report of sale, returned to court by said Special Commissioners; and upon an application made by William P. Thompson and Oliver H. Payne to have the sale set aside, and offering to bid, at a resale of the property, the sum of $173,000, and was argued by counsel.

" Upon consideration whereof it was, on the 19th day of June (instant), adjudged that all of the objections and grounds of exception assigned by Heman Loomis against the confirmation of the said sale made by said Special Commissioners to C. H. Shattuck on May 1st be overruled except the first, and that the said first ground of exception would be sustained, provided that the said W. P. Thompson and Oliver H. Payne should, within ten days, enter into a bond with approved security in the penalty of two hundred and fifty thousand dollars, payable to Lyman B. Dellicker the clerk of this court, conditioned that at any future sale of said property that may be made by decree in this cause the said Thompson and Payne, or some one for them, will bid the sum of one hundred and seventy-three thousand dollars, and that they will comply with the terms of said decree of sale in case they should become the purchasers of said property at said sum of $173,000; and provided, further, that the said Thompson and Payne should deposit in the registry of this court within said ten days the sum of ten thousand dollars in cash as additional security for their complying with the offer made by them, and that the said Loomis shall, within said ten days, refund the sum of $143.65 paid by Lavinia H. Austin for advertising, and pay the purchaser, at the said sale, the sum of $407.50, the same being the interest accruing upon the amount of purchase-money actually paid from the day of sale to the date of this decree.

"Now on this 30th day of June, 1884, the court doth find, that the said Wm. P. Thompson and Oliver H. did, on the 23d day of June, 1884, deposit the said $10,000 in the registry of this court, and entered into a bond in the penalty of $250,000, with Wm. N. Chancellor as security, conditioned in all respects as required by the court, and said bond and security are now approved and accepted, and the said bond is ordered to be filed and preserved.

"And it further appearing that the said Loomis has paid the $551.15 required of him within the time indicated by the court, it is adjudged, ordered, and decreed, this 30th day of June, 1884, that the matters accruing in this cause since the 18th instant be entered at this time as part of the record, which is here accordingly done *nunc pro tunc*, and that the first of said exceptions to said sale be sustained, and that said sale be, and is hereby, vacated, set aside, and annulled.

"It is further ordered, adjudged, and decreed, that the said J. B. Jackson and W. L. Cole, Special Commissioners, do repay Charles H. Shattuck the purchase-money received by them from the said Shattuck, and all securities delivered by the said Shattuck to them on account of said purchase-money.

"And it is further adjudged, ordered, and decreed, that Messrs. J. B. Jackson and W. L. Cole, Special Commissioners, do proceed at once in accordance with the terms and directions of the said decree passed and entered in this cause on the 17th day of November, 1883, to make sale of the property therein described and set forth." (Tr., 57, 58.)

The Commissioners resold the property on the 1st day of October, 1884, at which sale there were two bids. The first one was for $173,000, and made by J. N. Camden for Thompson and Payne, and was so announced by him; the second was for $173,050, made by the said J. N. Camden on his own account, and, there being no other or higher bid, the Commissioners knocked the property off to Camden at said second bid.

Camden did not pay to the Commissioners the cash therefor, but presented to the Commissioners a paper purporting to be a contract signed by some of the lien creditors authorizing him (Camden) to bid the property off for the benefit of creditors, if it should be sold for a less sum than the aggregate amount of the liens adjudicated in the decree of November 17th, 1883. (See the contract on pages 64, 65, and 66, Tr.)

The Commissioners declined to receive such contract as payment of the purchase-money, but at Camden's request, reported the facts to the court. Camden then, on the 6th day of October, 1884, filed a petition in the cause asking to have the sale confirmed to him on the basis of the contract. (Tr., 66, 67, and 68.) That petition was answered by the lien creditors, except Loomis, each denying that the contract was consummated, alleging that Camden had refused to act under it at the first sale, and objecting to a confirmation of the sale on the basis of the contract. Loomis answered, and also filed an independent petition, asking that the sale might be confirmed to Camden on the basis of the contract.

The Commissioners having made their report of sale, and the lien creditors, other than Loomis, having filed exceptions thereto, objecting to the confirmation, unless Camden would pay the money, and asking that he be required to do so, or that the property be resold at his risk and expense, the following order was entered on the 14th day of October, 1884:

ORDER.

"This day came James H. Carrington, A. C. Worth, William H. Beach, Robert S. Blair, The Toledo National Bank, and Benjamin B. Valentine, by C. C. Cole, their attorney, and filed their exceptions to the report of sale made by J. B. Jackson and W. L. Cole, Commissioners appointed by decree of this court, entered on the 17th of November, 1883, to make sale of the real estate and property in said decree mentioned, which report of sale was filed in this cause on the 4th instant.

"And it appearing to the court that, at the sale of said property, on the 1st day of October, 1884, held pursuant to said decree, J. N. Camden became the purchaser of said real estate and property for the sum of $173,050, and that he has failed to comply with the terms of sale by paying said sum of money, or any part thereof, to said Commissioners, or into the registry of this court, thereupon, on motion of the said defendants, Carrington, Beach, Worth, Blair, Toledo National Bank, and Valentine, a rule is awarded against the said J. N. Camden, returnable on the 3d day of November, 1884, to show cause, if any he can, why he should not pay to said Commissioners, or into the registry of the court, said sum of $173,050, so bid by him for said property as aforesaid, or why said sale should not be set aside, and said real estate and property resold by said Commissioners at the risk and costs of said Camden." (Tr., p. 74.)

On the 22d day of January, 1885, on the hearing of the counsel of Camden and Loomis, in favor of a confirmation of the sale to Camden on the basis of the con-

"And it is further adjudged, ordered, and decreed, that Messrs. J. B. Jackson and W. L. Cole, Special Commissioners, do proceed at once in accordance with the terms and directions of the said decree passed and entered in this cause on the 17th day of November, 1883, to make sale of the property therein described and set forth." (Tr., 57, 58.)

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Camden did not pay to the Commissioners the cash therefor, but presented to the Commissioners a paper purporting to be a contract signed by some of the lien creditors authorizing him (Camden) to bid the property off for the benefit of creditors, if it should be sold for a less sum than the aggregate amount of the liens adjudicated in the decree of November 17th, 1883. (See the contract on pages 64, 65, and 66, Tr.)

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The Commissioners having made their report of sale, and the lien creditors, other than Loomis, having filed exceptions thereto, objecting to the confirmation, unless Camden would pay the money, and asking that he be required to do so, or that the property be resold at his risk and expense, the following order was entered on the 14th day of October, 1884:

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On the 22d day of January, 1885, on the hearing of the counsel of Camden and Loomis, in favor of a confirmation of the sale to Camden on the basis of the contract, filed with his petition, as also the counsel for the lien creditors, upon their exceptions to the report of sale, the court set aside the sale, and directed the Commissioners to make a resale of the property as provided by said decree of November 17th, 1883, "for cash, which sale will be made at the costs of said Camden, and if the said property shall be sold for a less sum than one hundred and seventy-three thousand and fifty dollars, the said bid of the said Camden, the court reserves for further determination in this cause the question whether the said Camden will be required to pay the deficiency." (Tr., pp. 91 and 92.)

On the 17th day of March, 1885, the Commissioners again offered the property for sale, and it was knocked off to C. H. Shattuck (the same person who purchased at the first sale) at the sum of $119,100. This last sale was reported to the court for confirmation, and on the 6th day of June, 1885, a decree was entered in the cause, which, among other matters in said decree entered, "adjudged, ordered, and decreed that the report of said Commissioners of the sale made by them to Charles H. Shattuck on the 17th day of March, 1885, be, and the same is, approved, and the said sale is hereby ratified and confirmed, and the said Commissioners are hereby authorized and directed to convey by proper deed the said property to the said Shattuck, and he is to be let into the possession of said property as of the 17th day of March, 1885."

"It is further adjudged, ordered, and decreed that the said Johnson N. Camden is liable for, and that he do pay into the registry of this court, for the benefit of such of the parties to this suit, or other persons as may be entitled thereto, the sum of fifty-three thousand nine hundred and fifty dollars ($53,950), with interest thereon from this date, and all costs to be taxed by the clerk, rendered necessary by his failure to comply with the terms of sale, by paying the amount of his bid in cash, and any party to said cause, appearing to be entitled to any portion of said sum, may sue out execution, as at law, upon this decree, against said Camden for the amount herein decreed against him, and all money which may be realized from said execution, or executions, shall be paid by the Marshal into the registry of the court to the credit of this cause." (Tr., 160.)

(For convenience, this court can refer to the case as reported in 24 Fed. Rep., 205 *et seq.*)

From this decree Camden appealed.

It is submitted that this decree is erroneous, in ascertaining that there was a liability on Camden, by reason of his bid for the property, of the sum of $173,050, and failing to pay the amount of his said bid, and entering a decree against him for the sum of $53,950, the difference between the amount so bid by him and the amount for which the property was sold at the last sale, and he assigns this as error in the court below, and for the following reasons:

There can be no liability upon Camden for any deficiency upon a resale of the property, because his bid for the property at the sale made October the 1st, 1884, was only an offer to take the property at the price bid, should the court receive his bid and *confirm the sale:*

> "A sale by Commissioners made under a decree of a court of equity is not an absolute sale in Virginia, or in this State (West Virginia), and it does not become absolute until the sale is confirmed by the court; that the court may, in the exercise of a sound discretion, either affirm or set aside the sale, or direct the biddings to be reopened, where, from the facts and evidence and circumstances before it, it appears clearly that the sale was made at a greatly inadequate price."
>
> Kable *v.* Mitchell, 9th W. Va. R., 517.

It is true, a rule was issued against Camden to show cause why he should not pay the amount of his bid, and further, to show cause why the sale should not be set aside. But it fully appears by the Record that, upon the hearing of the rule, no order or decree was entered accepting his bid. On the contrary, it does appear that the sale so made to him was set aside, and as a consequence thereof his bid was rejected. Applying this rule, as laid down in *Kable* v. *Mitchell*, *supra*, Camden then was not a complete purchaser. His bid being rejected by the court, he should not be held liable for a deficiency upon a resale.

It is further submitted that it was error in the court to issue the rule until the court had first confirmed the sale.

In *Anonymous*, *2 Ves.*, *Jr.*, *335*, decided 17th June, 1794, Mr. Richards moved that a person reported best purchaser should complete his purchase and pay in his money on or before the 5th of July. The report had been confirmed *nisi*, and the motion was occasioned by a doubt as to the practice whether a purchaser can be quickened before the report is confirmed absolutely.

The Lord Chancellor said he felt a difficulty, because, till confirmation, the purchaser is always liable to have the biddings opened; till that, *non-constat*, that he is the purchaser.

In the case under consideration the court did that which the Lord Chancellor in the case cited said could not be done. It was an endeavor to quicken the purchaser; to compel him to pay his money into court before confirmation. This, we submit, was error; the court might not receive his bid, and until confirmation of the sale he was not the purchaser. The court, in the exercise of its power, refused to confirm the sale, and directed a resale. By so doing, Camden was discharged from his bid, or offer to purchase, and no liability remained upon him.

Confirmation is the judicial sanction of the court; until then the bargain is incomplete.

Until confirmed by the court the sale confers no rights.

Rorer on Sales, sec. 106.
Busey *v.* Hardin, 2 B. Mon., 407.
Blair *v.* Core, 20 W. Va., 265.
Core *v.* Strickler, 24 *Ib.*, 696.

In the case of Core *v.* Strickler the court held (affirming the rule in Blair *v.* Core and Kable *v.* Mitchell, *sup.*):

> "The Commissioner is the mere instrument, or agent, of the court, and the sale is not complete until it is reported to and confirmed by the court."

If then, until ratified by the court, the sale confirms no rights, and the sale is not complete until it is so ratified, to compel the purchaser to pay his money into court upon an offer that may never be (and in this case was not) accepted, would be inequitable, and the defendant, Camden, should not for that reason be held liable.

In Richardson *v.* Jones, 3 G. & J., 163, (*S. 6–22, American Decisions, 301*,) Buchanan, C J., held:

> "There must be a decree, or order of ratification amounting to a decree, as a foundation for an order to bring into court. Where there is not such a decree there can be no such order."

There was no such decree or order of ratification amounting to a decree in this case prior to the rule; hence the rule should not have issued.

The rule that the Master's report of a purchase must be absolutely confirmed before the contract can be considered as binding, applies equally to cases in which it is sought to compel a purchaser to complete his purchase as where it sought to enforce the contract against the vendor. As a preliminary step, therefore, towards enforcing the completion of the contract, it is necessary to have the report confirmed.

2 Dan'l Chan. Pr., pp. 1460, 1461.
Cooper *v.* Hepburn *et al.*, 15 Gratt., 566.

The bidder, not being considered the purchaser until the report is confirmed, is not liable to any loss by fire or otherwise, which may happen to the estate in the interim; nor is he, until the confirmation of the report, compellable to complete his purchase.

2 Dan'l, Sup., 1465.
1 Sugden V. & P., bottom pp. 70–71, (7 Am. Ed.)
Ex-Parte Minor, 11 Ves., 559.
13 Ves., 518.
1 J. & W., 639.

The bid made by the purchaser at the sale must be considered as his offer to the court through its Commissioners, and in making it he agrees to be bound thereby if it is accepted and approved by the court; it is discretionary with the court whether it will accept the bid and confirm the sale, or set it aside.

Marling *v.* Robrecht, 13 W. Va., 474.
Long *v.* Willer's Ex., 29 Gratt., 355.

In this proceeding Camden occupies an anomalous and trying position. He is required to pay nearly fifty-four thousand dollars and gets nothing to show for it. He has no title to the property and has no option to take it, as the title is in another, and yet he must pay this large sum. This is not regular by any means, but it quite reverses the well-recognized rule in orderly and consistent judicial proceedings. It is directly at war with the doctrine as laid down in the somewhat noted case of *Williamson* v. *Berry*, *8 How.*, *545–6*, and it ignores the views expressed in *Benson* v. *Railroad Co.*, *3 Wall.*, *207*.

This court, in *Stuart* v. *Gay*, *127 U. S.*, *527*, gives full sanction to the proposition here contended for in citing with approbation authorities sustaining this position. (*Campbell* v. *Gardner*, *3 Stock.*, (*N. J.*,) *423–5; Conover* v. *Walling*, *2 McCarter*, (*15 N. J.*,) *173.*) The case from 3 Stockton, (11 N. J.), with citations, would seem conclusive on the point.

After the report of sale by a Master *is confirmed* there are, according to the English practice, three means of remedying the failure of the purchaser to comply with terms of sale.

1st. If it appears that the purchase has been made by a person unable to perform his contract, the parties interested in the sale may, upon motion, obtain an order simply discharging him from his purchase, and directing the estate to be resold.

2d. If the purchaser is responsible the court will, if required, make an order that he shall within a given time pay the money into court, and if the purchaser, on being served with the order, fails to obey it, his submission to it may be enforced by attachment.

3d. Or an order will be made for the estate to be resold, and for the purchaser to pay the expenses arising from the non-completion of the purchase and the resale, and any deficiency in price arising under the second sale.

Lansdowne *v.* Elderton, 14 Ves., 512.
Harding *v.* Harding, 18 Eng. Ch., 514.
Anderson *v.* Foulke, 2 H. & G., 346.
Gordon *v.* Sims, 2 McCord, 151.
Brasher *v.* Cortlandt, 2 Johns. Ch'y, 505.
2 Dan'l Ch., pp. 1460, 1461, and 1462:
Clarkson *v.* Read, 15 Gratt., 291.
Hill *v.* Hill, 58 Ills., 239.
Rorer on Sales, Sec. 159.

By his purchase the purchaser becomes a *quasi* party to the suit, and in that suit proceedings may be had to compel him to comply with the terms of sale.

But he is not a party on the same footing with the litigants to the suit, for they are supposed to be always before the court, and are bound by every decree entered therein, without further notice, while, before a decree for a resale can be had against a purchaser, he must be served with a rule, whereby notice will be given to him that application for a resale will be made to the court.

2 Barton's Ch'y Pr., 1101.

This rule against Camden was issued before the sale was confirmed. In fact the sale to him was never confirmed. It being an offer to purchase on his part, and not accepted by the court, as evidenced by setting aside the sale by the court, he is discharged from liability.

Had the sale been confirmed, there being no evidence that Camden was irresponsible, the court, upon a rule and attachment, could have compelled payment, or could have made order for resale at Camden's cost.

The rule as issued seeks both remedies. It is contended that it was error (if the sale had been confirmed) to combine both remedies in the same rule.

Camden had no notice that an application for a resale would be made to the court. No day was given him in court to comply with the terms of sale, by paying the money into court. The sale was set aside without such day being given.

In accordance with the authorities cited, it is claimed he is discharged.

The decree directing the sale gave no day to the purchaser to redeem. It is the invariable rule to give such day in suits by mortgagee against the mortgagor to foreclose mortgage.

29 Gratt., sup., and cases cited, p. 355.
Clark *v.* Reyburn, 8 Wall., pp. 322-3-4.
Crockett *v.* Sexton, *Ib.*, 46.

The same rule applies in judicial sales. The contract is treated substantially as a contract between the purchaser, on one side, and the court, as vendor, on the other.

For these reasons, the decree appealed from should be reversed.

J. B. JACKSON,
A. H. GARLAND,
Counsel for Appellant.

Office Supreme Court U. S.
FILED,
NOV 9 1888
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1888.

JOHNSON N. CAMDEN
vs.
F. L. B. MAYHEW AND OTHERS.
No. 80.

Appeal from a Decree of the Circuit Court
of the United States for the District
of West Virginia.

BRIEF FOR APPELLEES.

C. C. COLE,
W. L. COLE,
Attorneys.

GEO. WADSWORTH,
of Counsel.

LAW REPORTER PRINT, 503 E ST.

IN THE

Supreme Court of the United States,

October Term, 1888.

Johnson N. Camden
vs.
F. L. B. Mayhew and others.
No. 88.

Appeal from a Decree of the Circuit Court of the United States for the District of West Virginia.

BRIEF FOR APPELLEES.

Statement.

This is an appeal from a money decree against appellant in the court below in the sum of $53,950.00. It was entered against him as a defaulting purchaser for the difference between a bid made by him and the sum for which certain property, decreed to be sold in the cause, was finally sold. The general question raised by the appeal is—

Whether the appellant is liable as a defaulting purchaser for the amount of the decree against him, or any amount?

The original case was a creditors' bill, brought by Mayhew and others against The West Virginia Oil and Oil Land Company, a corporation, and others, for the purpose of obtaining a decree to sell the property of the corporation, which consisted, mainly, of oil producing lands in West Virginia, for the payment of certain debts which were liens thereon, and the appointment of a receiver to preserve the property during the litigation. On the 19th day of March, 1881, a receiver was appointed, and the property was in his possession until after the sale.*

On the 17th day of November, 1883, a decree was passed adjudicating the amount and priority of the liens and directing the sale of the property for the payment thereof, and appointing two commissioners to make the sale. (See decree, Record, p. 1.)

The debts adjudicated by the decree of sale were as follows:

1	Wm. D. Thompson (J. N. Camden), .	61,267	79
	Richard A. Storrs, ...	47,663	29
	Heman Loomis, ...	39,476	61
	All these had equal priority of lien.		
2	James H. Carrington, ...	46,934	58
3	A. C. Worth, ...	2,650	08
4	W. H. Beach, ...	2,888	58
5	Toledo National Bank, ...	9,843	70
	R. S. Blair, ...	593	16
	The debts due the bank and Blair having equal priority.		
6	R. S. Blair, ...	592	66
7	Benjamin B. Valentine, . . .	9,056	93
8	Heman Loomis, . . . , .	49,111	16

Each of these sums bore interest from the date of the decree.

The debt due Thompson had been assigned to Camden, and was owned by him at the time of the rendition of the decree.

By consent of Thompson (Camden) and Loomis, as expressed in the decree, Storr's debt was paid in full out of money in the hands of the receiver, soon after the entry of the decree; and the Thompson debt had been reduced below $30,000 from the same source prior to the first sale of the property.

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*The decree appointing W. E. Stevenson receiver and defining his powers, and the decree appointing C. H. Shattuck in place of Stevenson, who resigned, are not contained in the printed record; but by stipulation of counsel they are to be considered as part of the record, and will be found attached to this brief.

About the time of the entry of the decree, the creditors provided for thereby entered into negotiations looking to an arrangement to bid the property at the sale to a sum large enough to pay all their debts in full, or purchase it for the benefit of the creditors—the plan being that Camden should bid for the property, and if it was knocked down to him for a sum less than the amount of all the debts, the others would assign to him their claims to be used in payment of the purchase money, and he was to hold the property for the benefit of the creditors in proportion to their debts, and apply the income of it to their payment, and when all were paid in full he was to be the owner of the property, he to charge nothing for his services in acting as trustee. (See Record, p. 64.)

A contract to this effect was prepared for the signature of all the creditors, and was signed by a part of them, but not by all, and never was consummated, for the reason that after the entry of the decree of sale, and prior to the first sale of said property, other persons, not parties to the record at the time of the decree, intervened in the cause by petition, claiming to have liens upon the property, and assailing the validity of the claims in favor of Loomis (see Record, p. 29); and upon giving leave to file such petitions, the Court intimated that so much of the proceeds of sale as might be applicable to the Loomis claims would be required to be paid into Court to await its further order. (See Record, pp. 22 and 23.)

The first sale of the property took place on the 1st day of May, 1884. Appellant was present but did not bid. The arrangement to have him bid for all the creditors having failed, some of them made other arrangements to bid until the price should cover their debts. J. H. Carrington bid for them as high as $162,000. C. H. Shattuck, who it afterwards appeared was bidding for a syndicate of which Robert Garrett, then president of the Baltimore and Ohio Railroad Company, was the chief, bid $163,000, and no one bidding higher the property was knocked down to him, and he paid or satisfactorily secured the payment of the entire purchase money. (See Record, p. 42.)

This sum was sufficient to pay all the creditors mentioned in the decree in full, except that eighth in priority due to Loomis. He and Camden joined in resisting the consummation of this sale. The court below determined to confirm it unless a materially higher bid should be offered. Thereupon William P. Thompson and Oliver H. Payne, then of Cleveland, Ohio, acting with Camden in resisting the confirmation of the sale, offered to bid $173,000 for the property if a resale should be ordered.

Upon receipt of that offer the Court entered an order to the effect that upon payment into the registry of the court of $10,000 by Thompson and Payne, and the filing of a bond by them with surety to be approved by the Court, in the penalty of $250,000, with condition that they would bid $173,000 at any future sale of the property, and pay therefor in accordance with the terms of the decree of sale if they should become the purchasers, a resale would be directed. The Camden Consolidated Oil Company, a corporation having its principal office at Parkersburg, W. Va., paid the $10,000 into court, and Thompson and Payne gave the bond with surety as required, and a resale was ordered.

At that time Thompson was vice president of the Camden Consolidated Oil Company as well as of the Standard Oil Company; Payne was treasurer of the Standard Oil Company, and Camden was president of the Camden Consolidated Oil Company, and each of these persons and the corporations of which they were officers, were members of the Standard Oil Trust, and each interested in any enterprise of this character which either of the others might undertake.

The property was resold on the 1st day of October, 1884. At that sale there were two bids only. Both were made by Camden. The first was for $173,000, and was made by him as agent for Thompson and Payne, and in pursuance of their obligation to bid, as announced by him to the commissioners of sale at the time. The second bid he made in his own name for $173,050. No higher bid being offered the property was knocked down to him. The commissioners accompanied him to his office to close up the transaction. Here he offered the incohate contract hereinbefore referred to, signed by a part of the creditors, and requested the commissioners to receive it as a compliance with and in discharge of his bid. (See Record, p. 62.)

He did not refer to it at the time of his bid, nor did he suggest at that time that he was bidding for any one but himself. The commissioners refused to receive the contract, or anything but cash in discharge of his bid. At appellant's request they consented to report to the court his offer of the contract for its opinion and instruction, he assuring them at the same time that if the court refused to accept the contract he would pay the money. They reported to the court that Camden had become the purchaser and had failed to comply with the terms of sale, but tendered the contract, which they refused to receive. Camden thereupon filed his petition in the cause, setting up the contract and praying that be might be "allowed to apply the claims and debts adjudged by said decree in *discharge of his liability for the purchase-money.*" (See Record, p. 66.)

All the other creditors, except Loomis, answered this petition, objecting to its prayer being granted, and denying that the alleged contract ever became operative or binding upon them, and insisting that if it had, it required Camden to bid at the first sale of the property, and his failure to do so was a breach of the contract, which would preclude him from insisting upon a performance by them. (See Record, pp. 75, 78, 84 and 85.)

These same creditors filed exceptions to the report of sale, because Camden failed to pay cash, according to the terms of sale; and upon their motion a rule was awarded against him, requiring him to show cause, if any he could, why he should not pay cash according to his bid, or in default of such payment, why the property should not be resold at his risk and cost. (See Record, p. 73.)

Camden relied upon his petition setting up the alleged contract in answer to the rule. While the record was in this condition, and before the court had acted upon this rule, Camden caused an application to be made to the court in the names of Thompson and Payne for the release of their bond and the return of their deposit, of which application none of the other creditors or their counsel had notice or knowledge, except Loomis; and upon the personal assurance by Camdem to the judge then holding the court that he would pay the cash if the court rejected the contract. (See Record, p. 169.) An order was made releasing the bond of Thompson and Payne and returning their deposit. Whereupon the $10,000 were repaid to the Camden Consolidated Oil Company. As soon as the other creditors learned of this, and during the same term of court at which the order was made, they filed petition and motion to have that order vacated, and gave notice thereof to Thompson and Payne. (See Record, p. 88.)

Upon the hearing of the rule against Camden to show cause why he should not be required to pay the money, the court adjudicated that he had failed to show any adequate cause (the alleged contract being all that was presented by him in defense), and he still failing to pay the money a resale was ordered at his costs, and the court reserved, until the coming in of the report of the next sale, whether he would be held for the deficiency, if any. (See Record, p. 91.)

The next sale was made on the 17th day of March, 1885, and the property was knocked down to C. H. Shattuck, the same person who purchased at the first sale, at the price of $119,100, which was paid to the commissioners in cash. (See Record, p. 92.)

Though Shattuck was the nominal purchaser, he purchased for a syndicate, of which Camden, as the representative of the Standard Oil Trust, was a member.

Since the first sale, the parties then represented by Shattuck had harmonized their interests with those of the Standard Oil Trust, and competition for the property ceased. The property was quite as valuable at the time of the last sale as it was when Thompson and Payne made the "up set" bid of $173,000, or when Camden made his bid of $50 more.

This last sale being reported, all the creditors whose debts would not be paid by the $119,100 filed their petitions, during the same term of court at which the resale was ordered, praying that the court would rehear the rule against Camden and require him to take the property at his bid and pay cash, or if he failed to do so, that Thompson and Payne might be required to take it at their bid, and if they also refused, that then the sale be confirmed to Shattuck and a decree entered against Camden for the difference between his bid and that of Shattuck. (See Record, pp. 96 and 102.)

Camden answered these petitions, again asserting his claim to take the property on the basis of the alleged contract, and contending that if he were not allowed to do so, he should not be held liable on his bid, *because the proceedings of the court since he made it were such as to release him from his liability.* (See Record, p. 107.)

Evidence was taken upon the issues joined on said petitions and answers, resulting in the establishment of the facts hereinbefore stated.

On the 15th day of May, 1885, the cause was heard upon these petitions and proceedings thereon, the rule against Camden, and the petition and motion to set aside the order cancelling the bond of Thompson and Payne. The court determined that the order cancelling the bond was erroneous, and set it aside. It also held that Camden was liable on his bid to take the property and pay therefor $173,050 cash, or that if he declined to do so, that he was liable for the difference between his bid and the last one of Shattuck. After announcing this determination, the court offered to confirm the sale to said Camden if he would take the property at his bid and pay the cash therefor, but he, being in court with his counsel, declined to accept the offer. The court then called upon said Camden, as agent for Thompson and Payne, to elect for them whether they would take the said property at their bid of $173,000; but Camden disclaimed having any authority to elect for them. The court then confiremd the sale to Shattuck and entered the decree from which this appeal was taken. (See Record, p. 158.)

The Questions Are:

I. Was Camden personally liable by virtue of his bid?

II. Was he entitled to discharge that liability by having a specific execution of the alleged contract in this suit?

III. Did the Court discharge him from his liability by its proceedings subsequent to his bid?

I.

Camden was personally liable by virtue of his bid.

The purchaser at a judicial sale is personally bound by his bid, although in fact he be bidding for another, unless he disclose his agency at the time of the bidding.

2 Jones on Mortgages, 1642.
Crockett *vs.* Sexton, 29 Gratt., 47.
Atkinson *vs.* Richardson, 14 Wisc, 157.
Gordon *vs.* Sanders, 2 McCord's Ch., 151.
McCombs *vs.* Wright, 4 Johns. Ch., 657.
The Kate Williams 2 Flip. C C R 50

Camden bid in his own name, and did not disclose his alleged agency at the time. (See Com'r's Report of 2d Sale, Rec., p. 62; Deps. of Cole, Jackson and Leonard, pp. 121, 128-9, 131-2.)

It is to be presumed that if Camden had disclosed, at the time he bid, that he claimed to be bidding for the creditors on the basis of the contract, his bid would have been rejected. Each of the Commissioners was of counsel in the cause, and were familiar with the record, and the fact that parties were then before the Court assailing the right of Loomis to any part of the large sums claimed by him, and that the court had intimated that the money which would be applicable to his claims would be retained in court to await the result of that controversy. Camden's claim to bid on the basis of the contract was utterly inconsistent with the state of the record at the time. One of the Commissioners was of counsel for all the creditors mentioned in the decree of sale, except Camden and Loomis, and carried on the negotiations in relation to the alleged contract and knew that it never was consummated, and for that reason those creditors represented by him had made arrangements to bid the property until it covered their claims at the first sale. (See dep. W. L. Cole, pp. 123–8.)

Camden considered himself personally bound by his bid if the Court should reject his prayer to have the sale confirmed to him on the basis of the contract.

He so told the commissioners, but requested them to report his offer of the con-tract, as he wanted the opinion of the Court upon that, and intimated that it was because he had received notice from Loomis to bid in pursuance of it. (See deps. W. L. Cole and J. B. Jackson, pp. 121, 129.)

His dispatch to Jackson of the 2d of October, 1884, the day following the sale, is the first intimation from him of an intention to deny personal liability in case the contract was not accepted. (See dispatch, Record, p. 130.)

The other commissioner knew nothing of this dispatch until after the last sale of the property. No such communication was made to him.

Both Camden and the counsel, (Mr. Boggess,) who filed the petition for him praying the benefit of the contract, understood that he was personally bound by his bid, for the prayer of that petition is that Camden "may be allowed to apply the claims and debts adjudged by said decree *in discharge of his liability for the purchase-money;* * * * *that the said contract may be received in discharge of his bid.*" (See prayer of petition, Record, p. 69.)

Mr. Camden and his counsel, (Mr. Jackson,) one of the commissioners who made the sale, took the same view in Camden's answer to the petition of the creditors (see Record, p. 109), where the above quoted language is repeated. In the same answer Camden says that prior to the sale he had been advised "*that he might incur personal liability in bidding under the contract*" if the court refused to accept the bid upon that basis. (Record, p. 113,)

Also in the same answer (Record, p. 115), he "*submits that by said decree of resale he was discharged from further liability upon his bid,*" thereby admitting his liability, and relying upon finding his discharge in what he now says were errors committed by the court in the proceedings against him to enforce that liability. This we will consider further on.

Again, the bid of Thompson and Payne was a valid one. Camden says in the same answer (Record, p. 109) that he put in that bid at their request, and on their account. The property would have been knocked down to them but for Camden's individual bid. Had it been there was already $10,000 in Court with a bond for the balance, as nearly equivalent to cash as anything else can be. Camden's bid deprived the creditors of the benefit of that bid. Not only this, but Camden was responsible for having the order made refunding to Thompson and Payne their deposit and cancelling their bond. It is true that Camden puts in a mild denial of this in his answer above referred to (Record, p. 119); but it is also true that the motion for this order was made by Mr. Boggess, who, on the same day represented Camden in support of his petition to have the sale confirmed to him on the basis of the contract. (See dep. of Dellicker, clerk of the court, Record pp. 132–'4). That order was applied for and made in the after part of Nov. 3d, 1884, without notice or any intimation whatever to any of the creditors or their counsel, except Loomis, and within a few hours after the order had been made, when all parties were represented, postponing the hearing of the case for thirty days. (See Orders, pp. 87–'8; Evidence, pp. 122–124.)

The attitude of Loomis in the case shows that he relied upon Camden to make good his bid of $173,050, upon the basis of the contract, if possible, otherwise in cash. Had this not been his understanding of Camden's position he surely would not have suffered the discharge of Thompson and Payne without protest. Upon Camden's refusal to pay the money, Loomis charged him with bad faith. (See Loomis' petition, p. 103.

While Mr. Camden denies, in his answer above referred to, that he procured the making of that inexplicable order, yet he justifiesthe same in the following language:

> "*Respondent, however, submits that his bid being made in good faith, and averring that he was at the time and ever since responsible for the amount of his said bid, that he is advised that the acceptance of his bid by the commissioners was a discharge of said bond, and entitled the said Payne and Thompson to a return of their deposit.*"

This could be true only upon the supposition that Camden was liable on his bid and intended to pay the money if the court would not accept the contract. That Camden so represented, or authorized such representation to be made to the District Judge who was holding the court at the time the order was made, is evident from a statement in the opinion of the Chief Justice. Speaking of how that order happened to be made, he says: "Neither at that time (when the order was made) or at any time before had it been intimated to the Court that if the prayer of the petition of Camden was not granted, he would not promptly pay the full amount of his bid in money. *On the contrary, the recollection of the judge holding the court at the time is distinct that it was expressly stated, either in the forenoon or afternoon, or both, that the bid of Camden was bona fide, and would be paid in money if required.*"

As the bond required Thompson and Payne to bid and pay cash *at any future sale*, it was not satisfied by one bidding, on any other hypothesis than that Camden's higher bid would be consummated, either on the basis of the contract, or by the payment of money. (See Record, p. 169.)

Prior to that order, objections had been filed by all the creditors except Loomis to the confirmation of the sale to Camden on the basis of the contract, and the same judge who made the order had made a previous one, reciting these objections and calling upon Camden to show cause why he should not be required to pay cash. (Record, p. 74.)

Under these circumstances, of course, the judge would not have made the order had he not been informed by Camden, or some one authorized to speak for him, that the money would be forthcoming when required by the Court. In this a fraud was practiced upon the court as well as the parties to the litigation.

II.

Camden was not entitled to have the sale confirmed to him on the basis of the alleged contract; because—

(a) The supposed contract never became binding upon the parties;

(b) Had it been binding, Camden violated it by refusing to bid at the first sale, and could not afterwards insist upon it;

(c) It could only have been consummated with the consent of the court, and the state of the record was such that this could not be had.

(A)

The Alleged Contract Never Became Binding upon the Parties.

The paper purports upon its face to be the contract of all the creditors mentioned in the decree of sale. (See contract and Camden's petition presenting it, Record, pp. 64 and 66.)

Two of the parties never signed or assented to it. It could not be binding upon any unless it bound all of the parties mentioned in it. Each of the other creditors, except Loomis, in their answers, insist that the contract never was completed or binding. (See answers, Record, pp. 75–85; deposition of W. L. Cole, pp. 123–8.)

It will be seen that this evidence was called out on cross-examination by Camden's counsel, and corroborates the answers of the several objecting creditors, and is uncontradicted by anything in the record.

This view is also supported by the exceptions of Loomis to the first sale, in which he alleges that he was unable to make arrangements to have the property bid to a sum sufficient to cover his claims. (Record, p. 54.)

Camden employed counsel to aid Loomis in having this sale set aside (Record, p. 114); but it is nowhere intimated in Loomis' exceptions or petition that he wanted the sale set aside to enable Camden to bid under the contract.

(B)

If binding upon the parties, Camden violated the Contract and could not afterwards insist upon performance by the others.

The first article of the contract requires Camden to bid the property off for the creditors, unless it should go for more than enough to pay all. (Record, p. 64.)

He admits that he was present at the first sale and did not bid on the property. (Record, p. 111.)

He gives as a reason why he did not, that the court, upon permitting the filing of petitions assailing Loomis' claims, intimated in an opinion then delivered that so much of the proceeds of sale as might be applicable to those claims would be required to be paid into court to await the result of the litigation. (See opinion of Judge Bond, pp. 52 and 53 of the Record.)

He also states (Record, p. 113) that by the order accepting Thompson and Payne's bid and ordering a resale the court "dismissed or so modified" the proceedings attacking Loomis' claims that they were no longer in the way of his bidding under the contract; but this is a mistaken view of the condition of the Record. Neither that order (Record, p. 57) nor any other modified the previous orders or opinion of the Court in relation to those claims. And the decree finally confirming the sale requires the money applicable to the Loomis' claims to remain in the registry until the further order of the court. (Record, pp. 160–1.)

The parties to the contract were all present or represented at the first sale and offered to complete the contract and carry it out, if Camden would bid, but he declined to do so, and the other creditors, except Loomis, made arrangements to bid the property to cover their debts.

A party who violates a contract cannot successfully insist upon its performance by the other parties to it.

Colson *vs.* Thompson, 2 Wheat., 336.
Boone *vs.* Mo. Iron Co., 17 How., 341.
Marble Co. *vs.* Ripley, 10 Wall., p. 357.

And if one party fails to comply with the contract the other may treat it as abrogated.

Construction Co. *vs.* Seymour et al., 91 U. S., 647.
Canal Co. *vs.* Gordon, 6 Wall., 561.

(C)

Had all the parties to the alleged contract joined in asking the confirmation of the sale to Camden on the basis provided in it, it could not have been granted.

The court decreed the property to be sold for cash. Even if the claims of Loomis had not been challenged with the permission of the court, after the entry of the decree of sale, and had all the parties entitled under the decree assigned their claims to Camden, and he had presented them in payment of the property, it would have been entirely within the discretion of the court to have accepted them as payment or not. But this was not the state of the record. Long before Camden bid the court had permitted parties to come upon the record for the express purpose of contesting Loomis' claims, amounting to more than $88,000. How could the Court in this state of the record permit Loomis to take the subject matter of the litigation and walk out of court with it?

Again, at the time Loomis signed the contract it was not within his power to comply with it, and he never has been able to do so. Prior to that time he had assigned to R. A.

Storrs $5,340 of his preferred claim. Storrs was not a party to the contract and declined to have anything to do with it. (Record, pp. 85–6; Camden's answer to Bank's petition, p. 112.)

Camden substantially admits in his petition that the contract was not binding upon the bank or Beach. (Record, p. 69.)

It could not be binding upon any unless binding upon all, and all were able to comply.

Camden has no right in his character as purchaser to insist upon a mode of payment different from that specified in the decree of sale.

In the White Sulphur Springs Case the Court held that doctrine. In that case, after the entry of the decree of sale, the purchaser bought in some of the claims, for the payment of which the property was sold and held absolute assignments of them without controversy; and in response to a rule against him to show cause why the property should not be resold for the payment of the balance of the purshase money due from him, insisted that, as purchaser, he had the right to credit for these claims in preference to others who claimed priority over him. In passing upon his claim in that regard this court said:

> "It is evident, in the first place, that the cause of complaint asserted by appellant does not belong to him legitimately in his capacity as purchaser. The decree for sale * * * did not contemplate payment of the purchase money otherwise than in money. * * * There was nothing in the decree which authorized the purchaser to assume that he would not be called upon to pay each installment as it fell due in cash. As a purchaser, therefore, bound for the payment of certain sums at given dates, and who cannot be compelled to pay more, and has no right to expect to pay less, it must be a matter of indifference how the proceeds of that sale shall be distributed among the creditors entitled thereto. * * * The complaint of the

appellant, therefore, if he has any, must be put forward in the capacity as a creditor, in respect to his rights upon distribution."

Stuart *vs.* Gay, 127 U. S., 529, 530.

Where the decree prescribes cash as terms of sale, the purchaser cannot claim as matter of right to pay the purchase money, or any part of it, in claims adjudicated against the property. It is in the discretion of the Court to permit it, if it can conveniently be done without prejudice to the rights of others. The inconvenience and impropriety of attempting this, in a case where some of the claims so offered are in litigation, and where the title thereto of the purchaser is in controversy, is manifest. The party purchasing under such circumstances has no ground of complaint if he be required to pay as specified in the decree for sale. If he has any rights in the purchase money as a creditor by the decree, or by contract with other creditors, he must assert such rights *as a creditor*, but *as a creditor* holding the first lien, the decree was not to his prejudice.

Appellant insists that the decree for sale was a consent decree, and made in connection with the alleged contract, with the expectation of all concerned that the property would be bid off by him at the sale. This is not true in point of fact. The decree shows upon its face that the only consent was in relation to some of the priorities. The deposition of one of the counsel is in the record showing fully under what circumstances the decree was entered. (Record, pp. 123–128.)

This was introduced upon cross-examination by appellant's counsel. Had the parties, or any of them, intended to secure beyond cavil the right to pay the purchase money with the adjudicated claims, the only sure way to have accomplished it would have been to put that provision in the decree for sale. This could easily have been done had the decree been by consent, as is now insisted. Such decrees are common where no creditor or party to be benefitted by the sale objects. Counsel representing the various parties, as well as the parties themselves, are presumed to have known the practice in this regard.

It is also to be borne in mind that had the facts been as now insisted upon by appellant, it would have been easy to have delayed the sale until attack made upon Loomis' claims had been decided. The parties assailing him prayed this action of the court. (See petition of Austin and others, Record, pp. 30–1.)

Camden was then a party to the record, as owner of the Thompson debt, and joined the other creditors in resisting this prayer, and insisting upon the sale as advertised. (See Record, pp. 52–3).

But if it were true that the decree was a consent decree, based on the contract, Mr. Camden is not in a position to complain; because (1) he abandoned the contract, and (2) he yielded nothing by his alleged consent to the decree.

III.

Was appellant discharged from liability by the proceedings of the Court subsequent to his bid?

In answer to this question we maintain:

First.

That Camden became liable as purchaser when the property was knocked down to him by the auctioneer at the direction of the commissioners.

Second.

That the Court, by its proceedings upon the report of sale to appellant, approved and ratified the sale made to him.

Third.

That the order of the 22d January, 1885, ordering a resale at Camden's cost, and

reserving the question of his liability for deficiency, did not discharge him from liability.

Fourth.

That if the order of the 22d of January, 1885, was not sufficient to fix Camden's liability absolutely for the deficiency, the proceedings upon the petitions for a rehearing of that order, whereby Camden was offered the opportunity of taking the property at his bid, and his declining were sufficient.

First. When property is knocked down to a bidder at a judicial sale by public auction, it constitutes a binding contract from which the purchaser can only be discharged by order of the Court for sufficient cause shown.

Blossom *vs.* The Railroad Company, 3 Wall., 196.
Miller *vs.* Sherry, 2 Wall., 238.
Gordon *vs.* Sims, 2 McCord (Ch.), 151.
Vance *vs.* Foster & Ray, 9 Bush., 389.
McLaren *vs.* Hartford Insurance Co., 1 Selden, 151.
Tripp *vs.* Cook, 26 Wend., 143.
Duncan *vs.* Dodd, 2 Paige, 99.
Fuller *vs.* Van Giesen, 4 Hill, 173.
Williamson *vs.* Dale, 3 Johns. Ch., 290.
Jackson *vs.* Warren, 32 Ills., 331.
Comstock *vs.* Purple, 49 *Id.*, 158.
Hill *vs.* Hill, 58 *Id.*, 239.
Gross *vs.* Percy, 2 Patton & Heath (Va.), 485.

Graffman v Burgess 117 US 180

In Blossom against the Railroad Company, the marshal offered property for sale under a decretal order of the court, and the appellant was the highest bidder, but the marshal did not knock the property down to him, but pending his bid adjourned the sale, and afterwards the debt for which the sale was to be made was paid or compromised, and the sale abandoned. Blossom filed his petition, claiming that his bid constituted him a purchaser, and praying confirmation of the sale to him, which the court below denied. Upon the question now under consideration, this Court in that case said:

> "Judicial sales made under the decretal orders of courts of chancery are also, in this country, governed by substantially the same rules (governing auction sales), except that such sales are usually made by the marshal, or a master in chancery acting as an officer of the court, and are always regarded as under the control of the court, and subject to the power of the court to set the sale aside for good cause shown, or open it at any time before it has been confirmed, if the circumstances of the case require the exercise of that power." * * *
>
> "Even after the sale is made, it is not final until a report is made to the court, and it is approved and confirmed. Either party may object to the report, and the purchaser himself, who becomes a party to the sale, may appear before the court, and, if any mistake has occurred, may have it corrected He, therefore, becomes a party to the proceeding, and may represent and defend his own interest, and may be compelled by the process of the Court to comply with the terms of the contract." (See p. 207 of the Report.)
>
> "Subject to those qualifications, and perhaps some others which need not be noticed, the question of sale or no sale, when it arises under a state of facts such as are exhibited in this record, may be fully tested by substantially the same rules as those which apply in cases of sales under common law process, or in other cases of sales at public auction." (See p. 208 of the Report.)

It cannot be doubted, that had the master knocked the property down to appellant, the court would have held him entitled to a conveyance of the property upon compliance with the terms of sale.

In Miller *vs.* Sherry, the decree directed the master to sell and convey. The sale was not reported to the court or confirmed by it. Objection was made that the deed did not pass the title. On page 248 of the Report, speaking of this objection, the court says:

> "Where a court of equity has jurisdiction, as in this case, a sale and conveyance in obedience to a decree is as effectual to convey the title as the deed of a sheriff, made pursuant to a sale under an execution issued upon a judgment at law."

In Gordon against Sims the purchaser bid in his own name, and subsequently claimed that he was bidding for himself and others entitled to the proceeds of sale, and alleged this in answer to a rule against him to show cause why he should not be required to pay the price bid in cash.

In an opinion holding the purchaser liable, Chancellor De Saussure says:

> "The Court looks to the sale, and, if it be regularly conducted and fairly made, considers it obligatory upon both parties." In a note to this case by the learned reporter (p. 161) it is said: "By the case of Gordon *vs.* Sims, the purchaser is bound by the entry of his bid. It is precisely as a sheriff's sale in that respect." * * *
>
> "The reporter suggests with diffidence, whether the court has the power in this country to open them (the biddings) on any other ground than on some equitable principle of relief, which would give jurisdiction to the court of equity in any other case of contract of sale. There must be some fraud, mistake, accident or other ground of purely equitable cognizance."

In the case in 9th Bush, after the sale under decree and before report to and confirmation by the court the property was greatly damaged by fire. The purchasers then refused to comply with terms of sale. Upon rule against them to show cause why they should not pay the purchase-money, the court says:

> "In our opinion, both the rights which the appellees acquired and the responsibilities they incurred by becoming the accepted bidders for the property, greatly exceed those resulting from mere proposals or offers to purchase subject to the approbation of the court. The principle, we think, cannot be questioned, that where, at the time a sale is made, no valid ground for setting it aside exists, the accepted bidder is entitled to his purchase, however much the property may appreciate in value between the sale and time for confirming it. This being so, why should he not be held bound by his purchase, although from accidental causes the property in the meantime may become impaired or depreciate in value?"

In the case of McLaren *vs.* Insurance Company, at the time of the sale under the decree the property was insured in the name of the mortgagor and assigned for benefit of the mortgagees, who were parties to the suit in which the sale was made. After sale of the mortgaged premises by the master, and before confirmation by the court the premises were destroyed by fire. Suit was brought by the mortgagor on the policy of insurance to recover for the loss. The court held that there could be no recovery on the ground that the purchaser at the judicial sale had become the equitable owner of the property prior to the loss.

The court says:

> "But with us the sale is strictly judicial, binding all parties from the time when the property is struck off, and cannot be set aside in general except for reasons which would prevent a specific performance in case of a contract of purchase between individuals."

In the case of Jackson *vs.* Warren, 32 Ills., 331, the action was ejectment, and the case turned upon the efficacy of a master's deed to pass title where the sale was not reported to the Court and approved. Upon this point the Court says:

> "The counsel for the appellant seem to entertain the opinion that the appellee had no title to his pur-

chase and master's deed, as the sale was not reported to the Court and approved. * * * In England the practice is to keep the biddings open at a master's sale, so that any person may advance on a bid received by the master, which he reports to the Court, so until a final confirmation of the sale, no one can be considered a purchaser, but a mere bidder; but under our practice at such sales a valid and binding contract of sale is made when the hammer falls. In the absence of fraud, mistake or some illegal practices, the purchaser is entitled to a deed upon the payment of the money." (See p. 342 of the report.)

The other cases cited hold substantially the same doctrine.

It is submitted that where the decree authorizes the officer of the Court to sell, as in this case, he acts for the Court in making the sale, and upon the falling of the hammer, the executory contract of sale is complete, enforcible against the purchaser by a proceeding for specific performance, unless something intervenes which would induce a Court of equity to refuse specific performance as between individuals.

The appellant and his counsel recognize this principle in his answer to petition of the bank (Record, p. 116), where he insists upon the confirmation of the last sale to Shattuck, in which he was interested, and says the court cannot refuse to confirm, except upon some ground "entitling a court of equity to interfere."

So that, in order to render appellant liable, it was not necessary that the court should approve or confirm the sale; but even if this had been necessary—

Second. The Court by its proceedings upon the report of sale to appellant recognized and confirmed it.

In the order permitting Camden to file his petition setting up the contract "*the sale made on the first instant*" to him is recognized. (Record, p. 66.)

In the rule awarded against appellant on motion of some of the creditors (Record, p. 74), the court recites, that "*it appearing to the court * * * that * * * J. N. Camden became the purchaser of said real estate*," and then calls upon him to show cause why he should not be required to pay the purchase-money.

Again, in the order cancelling the bond of Thompson and Payne, Camden was recognized as purchaser, and the report of sale was ratified and approved. The condition of that bond required the obligors to bid a certain sum "*at any future sale thereof that may be made by decree in this cause.*" The court, therefore, in relieving Thompson and Payne from that obligation, must have considered that a valid sale had been made, and that no future sale would be necessary. The only question left at that time for the court to determine as to the sale was as to the method of payment. No one appeared to resist the sale. No question was raised as to the title to the property, or the sufficiency of the price for which it sold. There was no complaint as to the regularity of the conduct of the sale by the commissioners; no exception whatever to their report, except that the purchaser had not paid for the property in cash, as required by the terms of sale. To get the cash, the creditors had procured a rule against Camden. In this condition of things Mr. Camden's counsel appeared for Thompson and Payne, and made an *ex parte* motion to relieve them from their liability. To secure this order it was expressly stated to the court (see opinion of Chief Justice Waite, Record, p. 169) that the bid of Camden was *bona fide* and would be paid in money if required.

These proceedings constituted a ratification of the contract with Camden.

Gross *vs.* Percy, 2 Patton & Heath (Va.), 485.

The decree of January 22, 1885, adjudicated that Camden was not entitled to pay for the property otherwise than in money. This he refused to pay, and the Court ordered a resale at his cost, deferring the determination of his further liability until such resale should be made.

Third. The order of January 22, 1885, does not discharge Camden from liability.

It is said that he was discharged because the court set aside the sale to him. In the same order the court adjudicates that he is liable to take the property and pay cash. It reserves the question of whether he shall be held for the deficiency in case one arises. Can it be said that the Court intended to discharge him, and reserve the question of his liability at the same time? The sale could be set aside, that is, disregarded by the court, without discharging Camden from liability on his contract. He had made a contract with the court. Upon being called upon to perform, he refused. That entitled the other party to the contract to disregard it, so far as to enable the court to resell the property to another, without embarrassment from the former sale. And that is the evident intent of the order. The Court certainly has as extensive rights under such circumstances as an individual acting in his own behalf. Under such circumstances the vendor may treat the contract as at an end, resell the property, and recover from the defaulting purchaser the loss on the resale.

Ohcan v Smith 2 Pa 211
Noble v Edwards 36 L J N S 312
5 L R Ch Div 378

Sands *et al. vs.* Taylor *et al.*, 5 Johns. R., 395.

In this case Van Ness, J., says:

"But it was urged that the contract is considered as dissolved. Be it so; but can there be a doubt that the defendants are liable for the difference in price, being a loss on the resale. Such suits have frequently been brought."

Kent, C. J., in the same case:

"Nor was the subsequent act of the plaintiffs in selling the wheat not delivered a waiver of their claim for damages for nonperformance of the contract. The usage in such cases is to sell the article after due notice to the other party to take it, and that in default of doing it the article will be sold."

See also—

Wood *vs.* Mann, 3 Sumn. C. C. R., 318.

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It was said in the case of Hill *vs.* Hill, 58 Ill., 239, cited above, that where the purchaser is already a party to the record, and entitled to a portion of the proceeds of sale, the court will sometimes reserve the question of liability for loss, if any, on resale, until such resale is made. (See p. 242 of the Report.) This was the course pursued also in the case of Lord *vs.* Lord, 1 Simons, 503.

There was good reason in this case to reserve that question. The court was not then informed of all the facts as it subsequently was on the coming in of the report of the third sale, the petitions of the creditors asking that Camden be charged with the deficiency, his answers thereto and the testimony. These subsequent proceedings, bringing upon the record important facts not then known, showed a case imperatively demanding that Camden should be charged with the deficiency.

Fourth. The proceedings upon the petitions for a review of the order of the 22d January, 1885, were sufficient to charge Camden with the deficiency.

The petitions of the creditors, asking to charge Camden with the deficiency, pray for a rehearing of the order of 22d January, 1885, and that he might be required to take the property and pay cash, or if he should refuse, that then Thompson and Payne might be so required to take it on their bid, and on their refusal that the sale to Shattuck might be confirmed, and Camden decreed to pay the deficiency. (Record, pp. 101, 104.)

These petitions were filed during the same term of the court that the order of 22d January, 1885, was made, and the final decree was at the same term, so the whole matter was in the control of the Court, and it was at liberty to make such decree as justice required.

Goddard *vs.* Ordway, 101 U. S., 745.

Camden was given an opportunity to take the property at his bid, after he had been informed that it was the determination of the court to hold him for the deficiency in case the sale was confirmed to Shattuck, and he declined. (See Record, p. 159.)

The court was at liberty to disregard the last sale to Shattuck if Camden had elected to take the property. There was conclusive evidence in the record that the property was worth at least $173.000, and Shattuck had purchased at $119,100, a price so grossly inadequate as to be presumptive evidence of fraud, which would have justified the setting aside the sale to Shattuck, had there been an opportunity to obtain more. But as no better offer could be obtained it was proper to confirm the sale to Shattuck and decree over against Camden.

Indeed the evidence in the record is conclusive of a combination on the part of Camden and others to obtain the property at a sacrifice.

Mr. Camden's desire to own and control the property, as well as his estimate of its value, appears from his contract with the creditors to purchase it. The debts against it were then over $200,000, and after paying these he considered the remainder sufficiently valuable to compensate him for his services as trustee. There is no evidence that the property had depreciated in value at the time of the last sale. Indeed if appellant had brought before this court the Receiver's reports the contrary would appear. Having got rid of the obligation of Thompson and Payne, Camden seems to have determined to take the chance, by refusing to pay for the property, of letting it go to sale again, buy it as cheap as possible, hoping in some way to escape liability for the deficiency.

The record shows that neither Shattuck, Camden, nor Thompson and Payne were bidding for themselves, but for combinations. While they were competing for the property the bidding run up to $173,000. At the time of the last sale these opposing bidders had combined and competition was thereby killed. Though Shattuck was the nominal purchaser at the last sale, Camden and his friends were the parties in interest. Camden admits that he was interested in it; that is, one of the purchasers, though he does not state the extent of his interest. (See his answer, p. 110.) It was sufficient, and the bargain such a good one as to render him very solicitous that the sale to Shattuck should be confirmed. (Record, p. 116.)

Neither Camden, Thompson or Payne were bidders at the last sale. They had entered into a conspiracy to stifle competition. This constitutes another cogent reason for holding Camden for the deficiency.

In the case of Cocks *vs.* Izard, 7 Wall., 562, this court says:

> "The law will not tolerate any influences likely to prevent competition at a judicial sale, and it accords to every debtor the chances for a fair sale and full price; and if he fails to get these, in consequence of the wrongful interference of another party, who has purchased his property at a price greatly disproportioned to its value, equity will step in and afford redress, either by setting aside the proceedings under the sale or by holding the purchaser to account."

Camden denies, in his answer above referred to, that Thompson and Payne were interested in this purchase; but at that time those persons were all members of the Standard Oil Trust, the known object of which is to monopolize all oil interests. This is a part of the public and general history of the country of which the court takes judicial notice, (Romero *vs.* United States, 1 Wall., 721), and in connection with the article in the North American Review, proved to have been written by Camden, shows the connection of the Standard Oil Company with the combination, and Thompson and Payne are confessedly component parts of that concern. In addition to that, a Congressional investigation has made the whole combination a matter of record to which the court has the right to look, and which shows that Thompson, Payne and Camden were members of the Standard Oil Trust, and Payne one of the trustees of that "combine." (Report, No. 3,112, House Committee on Manufactures, Fiftieth Congress, pp. 307–313.

Every equitable consideration appeals strongly to the court to affirm the decree appealed from.

C. C. COLE,
W. L. COLE,
Attorneys for Appellees.

GEORGE WADSWORTH,
Of Counsel.

At a Circuit Court of the United States for the District of West Virginia continued and held at Parkersburg, in said District, on the 17th day of November, 1883, the following order was made and entered of record, to wit:

F. L. B. Mayhew & Co.
vs.
The West Virginia Oil and Oil Land Company and others.
} In Equity.

This day, William E. Stevenson, special receiver, heretofore appointed in this cause, by his counsel, John A. Hutchinson, tendered his resignation as such receiver on the ground of continued ill health, which resignation is hereby accepted by the court. And it is ordered by the court that leave be, and the same is hereby, granted to the said William E. Stevenson to settle his accounts on or before the 1st day of December, 1883, with the auditor of this cause, and on the settlement of his said accounts the said auditor shall credit him with the amount of a note of B. S. Compton for about two hundred dollers, indorsed by L. L. Johnston, made a short time before the said Compton's death, and the said Stevenson is also to be allowed his salary to the 1st day of December, 1883; and said Stevenson, after his said settlement, shall deliver to his successor all bonds, accounts and papers connected with the office of special receiver aforesaid.

And thereupon, upon motion of the plaintiffs and defendants, by their counsel, and by consent of the same, it is ordered that Charles H. Shattuck, Esq., be, and he is hereby, appointed special receiver in this cause, as the successor of the said William E. Stevenson, to take charge of the property and to perform all the duties heretofore imposed on and required of the said Stevenson; the duties of the said

Shattuck to commence from and after this date. But, before entering upon the discharge of his duties, the said Shattuck shall give bond before the clerk of this court in the penal sum of fifteen thousand dollars, conditioned as directed in the order appointing the said Stevenson; and it is further ordered that the money and funds now in bank to the credit of Receiver Stevenson be turned over to Receiver Shattuck, after he has settled his accounts with the auditor in the cause, and for all assets turned over to him the said Shattuck will execute to Receiver Stevenson a receipt for the same as a voucher to be filed with the auditor in the settlement of his account.

I, L. B. Dellicker, clerk of the Circuit Court of the United States for the district of West Virginia, do hereby certify that the paper hereto attached is a true copy of the decree of said Court made in the cause of F. L. B. Mayhew & Company *vs.* The West Virginia Oil and Oil Land Company and others, appointing Charles H. Shattuck receiver of the property of the said corporation and defining his powers and duties.

And I further certify that the said Shattuck, as such receiver, regularly made his reports to the court as required by said decree, and no exception to said reports or either of them was ever filed.

In testimony whereof, I have hereunto set my hand and the seal of said court, at Parkersburg, in said district, on this the 9th day of March, A. D. 1888.

[SEAL] L. B. DELLICKER,
Clerk Circuit Court United States,
District of West Virginia.

PARKERSBURG, W. VA., *May 11, 1888.*

It is consented to and agreed by I. N. Camden, that the foregoing order may be used and read as a part of the record in said cause now pending in the Supreme Court of the United States as fully as if the same was printed in and a part of said record.

I. N. Camden,
By J. B. Jackson,
His Solicitor.
A. H. Garland.

At a Circuit Court of the United States for the District of West Virginia, continued and held at Parkersburg, in said district, on the 19th day of March, 1881, the following order was made and entered of record, to wit:

F. L. B. Mayhew & Co.
vs.
The West Virginia Oil and Oil Land Company and others.
In Equity.

On motion of the complainants, and by consent of the parties who have proved bonds in this cause, it is, this 19th day of March, 1881, ordered, adjudged and decreed, that William E. Stevenson be, and he hereby is, appointed receiver of all the property and assets of the said The West Virginia Oil and Oil Land Company, mentioned and included in the deed of trust mentioned in and filed with the bill in this cause, and the rents, issues and profits thereof, until the further order of the court. And upon his giving bond in the penalty of fifteen thousand dollars, with one or more good sureties, for the faithful discharge of the duties required and the trust reposed in him by this or any further order or decree to be made in this cause, and for properly paying over and accounting for all money which may come into his hands or control by virtue of his said office or trust of receiver herein, he is hereby authorized and required to take into his possession and control all the said property and assets of whatever kind embraced in said deed of trust, and protect and preserve the same for such parties as the court may hereafter adjudicate entitled to the same, and the agents and officers of the said corporation now in the possession and control of the said corporation are directed and required to deliver possession of said property to the said receiver, and the tenants in possession of the said real estate are directed and required to attorn and pay rent to him. And the said receiver will collect and receive from the said tenants all rents now due or hereafter to become due from them, or any of them, to the said corporation, whether the same be payable in oil, money or other valuable thing; and if in his opinion the interests of the parties entitled thereto shall require that he sell any or all of the oils so collected or received by him at the best price and on the best terms obtainable therefor, and out of the proceeds of said sales or other moneys received by him, he pay the necessary costs and expenses of collecting, receiving and marketing said oils, and of carrying on said receivership, and the residue thereof deposit in the First National Bank in the City of Parkersburg to his credit as receiver, there to remain until the further order of this court.

And at the end of every thirty days the said receiver will file in the clerk's office of this court a report showing the quantity of rent collected by him, and from whom, and if in oil, where situated at the time of the report, and also stating any sales made by him, to whom, and at what price, and the payments or disbursements on account of expenses, to whom, and for what, and the balance of oil or money, or both, remaining in his hands at the date of said report, and where the money is deposited, and the agents and officers of said corporation, and any and all persons acting, or claiming to act in its behalf, their servants, agents and attorneys, are hereby enjoined from collecting or receiving from said tenants any rent after this date, or in any manner exercising any acts of possession or control over any of the property mentioned in said deed of trust until the further order of this court. And if the conduct of the affairs of the defendant company there should arise any emergency in which the receiver shall be of the opinion it would be of interest to the parties concerned to exercise larger powers than those granted by this decree, he shall before doing so apply in writing to the court for its judgment thereon, and give notice of such application to the counsel of record.

I, L. B. Dellicker, clerk of the Circuit Court of the United States for the District of West Virginia, do hereby certify that the paper hereto attached is a true copy of the decree of said Court made in the cause of F. L. B. Mayhew & Company *vs.* The West Virginia Oil and Oil Land Company and others, appointing William E. Stevenson receiver of the property of the said corporation and defining his powers and duties.

And I further certify that the said Stevenson as such receiver regularly made his reports as required by said decree and that no exception to said reports or either of them was ever filed.

In testimony whereof I have hereunto set my hand and the seal of said court at Parkersburg, in said district, this 12th day of September, A. D. 1888.

L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

It is consented and agreed by I. N. Camden that the foregoing order may be used and read as a part of the record in the above entitled cause in the Supreme Court of the United States as fully as if the same was printed in and a part of the record of said cause.

I. N. CAMDEN,
By J. B. JACKSON,
Of Counsel.
A. H. GARLAND.